

**PLANNING COMMISSION AGENDA**  
**CITY OF NEWPORT BEACH**  
**COUNCIL CHAMBERS - 3300 NEWPORT BOULEVARD**  
**Thursday, June 9, 2011**  
**Regular Meeting – 4:00 p.m.**

**EARL MCDANIEL**  
Chairperson

**CHARLES UNSWORTH**  
Vice Chairperson

**FRED AMERI**  
**BARRY EATON**  
**ROBERT HAWKINS**  
**BRADLEY HILLGREN**  
**MICHAEL TOERGE**

Planning Commissioners are citizens of Newport Beach who volunteer to serve on the Planning Commission. They were appointed by the City Council by majority vote for 4-year terms. At the table in front are City staff members who are here to advise the Commission during the meeting. They are:

**JAMES CAMPBELL, Principal Planner**

**LEONIE MULVIHILL, Assistant City Attorney**

**PATRICK ALFORD, Planning Manager**

**TONY BRINE, City Traffic Engineer**

**GREGG RAMIREZ, Senior Planner**

**ROSALINH M. UNG, Associate Planner**

**ERIN STEFFEN, Planning Technician**

**FERN NUENO, Assistant Planner**

**MARLENE BURNS, Administrative Assistant**

**NOTICE TO THE PUBLIC**

Regular meetings of the Planning Commission are held on the Thursdays preceding second and fourth Tuesdays of each month at 6:30 p.m. Staff reports or other written documentation have been prepared for each item of business listed on the agenda. If you have any questions or require copies of any of the staff reports or other documentation, please contact the Community Development Department, Planning Division staff at (949) 644-3200. The agendas, minutes and staff reports are also available on the City's web site at: <http://www.newportbeachca.gov>.

This committee is subject to the Ralph M. Brown Act. Among other things, the Brown Act requires that the Commission's agenda be posted at least 72 hours in advance of each meeting and that the public be allowed to comment on agenda items before the Commission and items not on the agenda but are within the subject matter jurisdiction of the Commission. The Commission may limit public comments to a reasonable amount of time, generally either three (3) or five (5) minutes per person.

It is the intention of the City of Newport Beach to comply with the Americans with Disabilities Act (ADA) in all respects. If, as an attendee or a participant at this meeting, you will need special assistance beyond what is normally provided, the City of Newport Beach will attempt to accommodate you in every reasonable manner. Please contact Leilani Brown, City Clerk, at least 72 hours prior to the meeting to inform us of your particular needs and to determine if accommodation is feasible (949-644-3005 or [lbrown@newportbeachca.gov](mailto:lbrown@newportbeachca.gov)).

If in the future, you wish to challenge in court any of the matters on this agenda for which a public hearing is to be conducted, you may be limited to raising only those issues, which you (or someone else) raised orally at the public hearing or in written correspondence received by the City at or before the hearing.

**APPEAL PERIOD:** Use Permit, Variance, Site Plan Review, and Modification Permit applications do not become effective until 14 days following the date of approval, during which time an appeal may be filed with the City Clerk in accordance with the provisions of the Newport Beach Municipal Code. Tentative Tract Map, Tentative Parcel Map, Lot Merger, and Lot Line Adjustment applications do not become effective until 10 days following the date of approval, during which time an appeal may be filed with the City Clerk in accordance with the provisions of the Newport Beach Municipal Code. General Plan and Zoning Amendments are automatically forwarded to the City Council for final action.

**NEWPORT BEACH PLANNING COMMISSION AGENDA**  
**Council Chambers – 3300 Newport Boulevard**  
**Thursday, June 9, 2011**  
**REGULAR MEETING**  
**4:00 p.m.**

- A. CALL TO ORDER**
- B. PLEDGE OF ALLEGIANCE**
- C. ROLL CALL**
- D. PUBLIC COMMENTS**

*Public comments are invited on non-agenda items generally considered to be within the subject matter jurisdiction of the Planning Commission. Speakers must limit comments to 3 minutes. Before speaking, please state your name for the record and print your name on the tablet provided at the podium.*

- E. REQUEST FOR CONTINUANCES**
- F. CONSENT ITEMS**

**ITEM NO. 1**                      Minutes of May 19, 2011

**ACTION:**                      Approve and file.

- G. PUBLIC HEARING ITEMS**

**ALL TESTIMONY GIVEN BEFORE THE PLANNING COMMISSION IS RECORDED. SPEAKERS MUST LIMIT REMARKS TO THREE MINUTES ON ALL ITEMS.** (Red light signifies when three minutes are up; yellow light signifies that the speaker has one minute left for summation.) Please print only your name on the pad that is provided at the podium.

Any writings or documents provided to a majority of the Planning Commission regarding any item on this agenda will be made available for public inspection in the Community Development Department, Planning Division located at 3300 Newport Boulevard, during normal business hours.

**ITEM NO. 2**                      Pemstein Residence Minor Use Permit and Variance (PA2010-173)  
2430 Holiday Road

**SUMMARY:**                      A minor use permit to allow for the retention of an as-built second dwelling unit to be converted to a senior accessory dwelling (granny) unit and a related variance to allow for the construction of a garage addition to encroach 2 feet into the required 10-foot easterly side setback.

The application also includes ten (10) other variance requests to allow for the retention of the following as-built structures:

- An 8-foot high arbor with a footprint of 48 square feet that encroaches 13 feet into the 15-foot front setback, where the Zoning Code limits the height of such structures to 9 feet and a maximum footprint of 16 square feet.
- An 8-foot high arbor with a footprint of 48 square feet that encroaches 10 feet into the westerly 10-foot side setback, where the Zoning Code limits the height of such structures to 9 feet and a maximum footprint of 16 square feet.

- An 8-foot high arbor with a footprint of 48 square feet that encroaches 10 feet into the 10-foot rear setback, where the Zoning Code limits the height of such structures to 9 feet and a maximum footprint of 16 square feet.
- An 8-foot high arbor with a footprint of 48 square feet that encroaches 10 feet into the easterly 10-foot side setback, where the Zoning Code limits the height of such structures to 9 feet and a maximum footprint of 16 square feet.
- A 55-inch high brick wall that encroaches 5 feet into 15-foot front setback, where the Zoning Code limits the height of such structures to 42 inches.
- An 8-foot high wall that encroaches 10 feet into the westerly 10-foot side setback, where the Zoning Code limits the height of such structures to 6 feet.
- An 8-foot high wall that encroaches 10 feet into the 10-foot rear setback, where the Zoning Code limits the height of such structures to 6 feet.
- An 8-foot high wall that encroaches 10 feet into the easterly 10-foot side setback, where the Zoning Code limits the height of such structures to 6 feet.
- An 8-foot-3-inch high fireplace that encroaches 8 feet into the westerly 10-foot side setback, where the Zoning Code limits the height of such structures to 6 feet.
- A 129-square-foot (footprint of 148 square feet under roof), 11-foot-4-inch high storage building that encroaches 5 feet into both the 10-foot easterly side setback and 10-foot rear setback, where the Zoning Code limits the height of such structures to 6 feet.

The application also indicates the existence of an 8-foot high arbor with a footprint of 48 square feet that encroaches into the required front and easterly side setback, where the Zoning Code limits the height of such structures to 9 feet and a maximum footprint of 16 square feet. The applicant has indicated that this arbor will be removed. Therefore, it is not included in the variance request.

**CEQA  
COMPLIANCE:**

The project is categorically exempt under Section 15303, of the California Environmental Quality Act (CEQA) Guidelines - Class 3 (New Construction or Conversion of Small Structures). The scope of the work is limited to a garage addition and conversion and alterations of an existing structure to accommodate a granny unit. Also, included in the request is to retain several accessory structures including arbors, walls, a fireplace, and storage building.

**ACTION:**

- 1) Conduct public hearing; and
- 2) Adopt a resolution approving Minor Use Permit No. UP2010-040 for the granny unit and denying Variance No. VA2011-005 for the construction or retention of all setback encroachments.

**ITEM NO. 3**

Dry Dock Restaurant (PA2011-005)  
2601 West Coast Highway

**SUMMARY:**

A conditional use permit application for a food service restaurant with late hours, live entertainment, alcohol sales, outdoor dining, and delivery. The application also includes a request for a parking management plan to address off-site parking, valet, and an adjustment to the off-street parking requirements. The proposed hours of operation for dining and delivery are 11:00 a.m. to 2:00 a.m., daily.

**CEQA**

**COMPLIANCE:** The project is categorically exempt under Section 15301, of the California Environmental Quality Act (CEQA) Guidelines - Class 1 (Existing Facilities), which exempts minor alterations to existing facilities. The existing building will remain with no additional square footage. The scope of the physical construction is limited to minor alterations. The building was previously used as an eating and drinking establishment and any changes in operational characteristics are negligible.

**ACTION:** 1) Conduct public hearing; and  
2) Adopt a resolution approving Conditional Use Permit No. UP2011-001.

**ITEM NO. 4** Newport Beach Country Club – Golf Realty Fund (PA2005-140)  
1600 & 1602 E. Coast Highway

**SUMMARY:** Staff recommends that this item be continued to August 4, 2011, due to the change in the Planning Commission membership.

**ITEM NO. 5** Newport Beach Country Club – International Bay Clubs, Inc. (PA2008-152)  
1600 E. Coast Highway

**SUMMARY:** Staff recommends that this item be continued to August 4, 2011, due to the change in the Planning Commission membership.

**H. NEW BUSINESS****I. STAFF AND COMMISSIONER ITEMS**

**ITEM NO. 6** Planning Director's report.

**ITEM NO. 7** Announcements on matters that Commission members would like placed on a future agenda for discussion, action, or report.

**ITEM NO. 8** Request for excused absences.

**ADJOURNMENT**



**NEWPORT BEACH PLANNING COMMISSION MINUTES**  
**Council Chambers – 3300 Newport Boulevard**  
**Thursday, May 19, 2011**  
**REGULAR MEETING**  
**6:30 p.m.**

**A. CALL TO ORDER** - The meeting was called to order at 6:30 p.m.

**B. PLEDGE OF ALLEGIANCE** – Led by Commissioner Toerge

**C. ROLL CALL**

PRESENT: Ameri, Hawkins, McDaniel, Toerge, and Unsworth  
ABSENT (EXCUSED): Eaton and Hillgren

Staff Present: James Campbell, Acting Planning Director, Gregg Ramirez, Senior Planner, Leonie Mulvihill, Deputy City Attorney, Janet Brown, Associate Planner, Kay Sims, Assistant Planner, and Marlene Burns, Administrative Assistant

**D. PUBLIC COMMENTS** – None.

**E. REQUEST FOR CONTINUANCES** – None.

**F. CONSENT ITEMS**

**ITEM NO. 1** Minutes of May 5, 2011

Commissioner Hawkins offered the following corrections to the minutes of May 5, 2011: 1) Page 1, Public Comments, Commissioner Hawkins recalled that there was general consensus among the Commission that the Planning Division should regard public speaker Purcell's comments as "complaints" which should be then forwarded to Code Enforcement, 2) Page 1, Minutes, Mr. Hawkins suggested that if corrections are made to the presented minutes, the motion should read, "minutes...as corrected," 3) Page 3 of 6, Mr. Hawkins recalled that he seconded the motion related to the Irvine Company Project item.

**Motion** made by Commissioner Hawkins and seconded by Commissioner Toerge, and carried (5 – 0) to approve the minutes as corrected.

AYES: Ameri, Hawkins, McDaniel, Toerge, and Unsworth  
NOES: None.  
ABSENT: Eaton and Hillgren  
ABSTAIN: None.

**G. PUBLIC HEARING ITEMS**

**ITEM NO. 2** 3-Thirty-3 Waterfront Restaurant (PA2011-041)  
333 Bayside Drive

Staff report and a brief PowerPoint Presentation was provided by Janet Brown, Associate Planner. Brian Moore, Newport Beach Police Department was also present.

The application consists of a request for a new conditional use permit to extend the hours of operation granted by Accessory Outdoor Dining Permit No. 2007-001 for an existing outdoor dining patio from 9:00 a.m. to 9:30 p.m. daily to 9:00 a.m. to 1:00 a.m. daily. The hours of operation for the interior portion of the

existing restaurant are 9:00 a.m. to 2:00 a.m. daily, as allowed by Use Permit No. 3325 (amended). If approved, the new conditional use permit will supersede the existing use permit and accessory outdoor dining permit, and an Operator License will be required.

Associate Planner Brown noted that subsequent to the publication of the staff report, new additional complaints were received from residents of Linda Isle and were distributed to the members of the Planning Commission. Staff's recommendation was developed utilizing input from the City's Code Enforcement Division, Harbor Resources Commission, and Police Department. Associate Planner Brown noted that based on this input, it appeared that the applicant had taken corrective measures to comply with the existing conditions of approval associated with this use.

Staff and Commission discussion ensued regarding the Police Department's ability to enforce a reduction of operational hours if the applicant had an "operator's license," the fact that the conditions of the operator's license apply to the entire subject establishment, that sufficient "facts and findings" must be presented to curtail operations at the subject establishment, the prohibition of certain activities under Condition of Approval Number 21, and the circumstances under which the Conditional Use Permit would return to the Planning Commission for review and/or revocation.

Jeff Reuter, applicant, expressed concerns that his project was not the initiator of the majority of complaints received regarding the project, rather, the concurrent reconstruction of the adjacent marina and docks contributed significantly to the environmental noise, that the outdoor patio use was not an extension of the bar, and that the environmental noise would reduce once the construction of the marina and docks was completed, and that the agreement for the operator's license would subject the whole project to stringent conditions in order to obtain additional hours for outdoor dining service.

Discussion ensued between the Planning Commission and the applicant regarding the "fair hearing" process, the dining "cycles" of patrons, the demographic and dining differences between patrons utilizing the interior and exterior sections of the restaurant.

Chair McDaniel opened the public hearing and public comments.

Frank Battaile, an attorney representing several residents living adjacent to the subject property, spoke in opposition to the extension of the hours for the exterior of the restaurant, that previous noise mitigation measures have not been successful, expressed concerns regarding the potential illegality of delegating the authority of the Planning Commission to the Police Department and/or City Manager, without the ability for appeal back to the Planning Commission, the implication that the Police Department is supportive of this project as described in a previous written memorandum, and that the decreases in noise over the past months were a result of patrons not using the patio during the colder winter months.

Dr. David Benvenuti, resident, stated that he was originally in support of the restaurant when it first opened, however, he expressed concerns that the noise impacts are getting worse. He further stated that residents are not always calling Code Enforcement even though incidents are occurring, that the use of the restaurant is primarily a "club and party" use, rather than a dining use, and that he has filed formal complaints with the Police Department regarding the deck being open later than the current restricted hours.

Donna Viana, Vice President, Linda Isle Homeowners Association, spoke in opposition to the extension of the patio hours, that the letters in support of the project were "form" letters, and stated that although she enjoys and has visited the restaurant for lunch and early dinner dining, she noted that each time she has visited the restaurant, the windows are always opened, contributing to the ambient noise impacts to the adjacent neighborhood.

Dan Purcell, Corona del Mar resident, stated that he was not expressing support or opposition to the project. He did note his opinion that the restaurant was primarily a "late at night" nightclub and that the Planning Commissioners and City Council have a fiduciary responsibility to see "for themselves" what activities are occurring at the subject properties they are discussing.

Don McCalla, 22 year resident, acknowledged that the current restaurant applicant has done a good job in mitigating certain matters (valet and smoking issues), referenced documentation compiled by his spouse which detailed complaints regarding the subject property since July 2010, noted that there are no mutually-agreed upon sound studies that have been conducted, and expressed concerns that the restaurant will continue to produce ambient noise and other negative impacts due to expansion of the patio use hours. He referenced the lack of attenuated windows in the outdoor dining area, and the types of uses he has observed at the subject property, including "shooter parties."

Sandy McCalla, submitted a document for the record which documented her observations of noise impacts since July 2010, she noted that deck dining cannot be projected to be for older patrons only, and also noted that the ambient noise is audible to the adjacent residences even with windows closed, and that the restaurant is primarily a "club and party" destination. In addition, she referenced incidences of live music on the patio.

Leann Benvenuti, spoke in opposition to the project, noted that the noise is "intolerable" during the summer months, and expressed concerns that the ambient noise level would only increase if the hours of patio operation were extended. Ms. Benvenuti acknowledged the improvements that were made after the applicant moved the valet and smoking sections to the alternate side of the subject property.

Chair McDaniel closed the public comments and the public hearing. He reopened the public hearing in order for the applicant, Jeff Reuter, to respond to the public testimony.

Jeff Reuter, applicant, stated that the matter before the Commission was related to dining and that patrons are not allowed on the dining deck unless they eat dinner. Alcohol-only sales are not permitted.

Discussion ensued among Commission, Staff, and Mr. Reuter, related to the design scope of the outside dining area, the historical requirements that governed the outside patio design development and the type of dining and restaurant use that occurs during different times of the evening.

Chair McDaniel closed the public comment and public hearing.

Detective Moore, Newport Beach Police Department, provided a report related to the submitted memorandum regarding the subject property. He indicated that Police Department personnel visited the site during various hours and, occasionally in an undercover capacity to observe activities during various restaurant hours. He mentioned that the adjacent docks could be contributing to the ambient noise and that patrons were not observed on the patio after 9:30 p.m. Detective Moore indicated that only a small percentage of patrons are consuming a full meal after 11:00 p.m. and the majority of patrons after that time were participating in cocktail service.

Commissioner Toerge and Hawkins and Chair McDaniel indicated that they would not be supporting the proposal.

Commissioner Hawkins suggested that he would support a motion to deny "without prejudice," have the applicant respond to the feasibility of enclosing the patio structure, and to have staff work with the applicant to come to a compromise solution or general plan amendment and address required parking.

Commissioner Ameri suggested that the applicant enclose the entire patio to eliminate any noise impacts and to possibly consider a variance for the parking requirement.

**Motion** made by Commissioner Hawkins and seconded by Commissioner Toerge, and carried (5 – 0) to deny the approval of Conditional Use Permit No. UP2011-007.

AYES: Ameri, Hawkins, McDaniel, Toerge, and Unsworth  
NOES: None.  
ABSENT: Eaton and Hillgren  
ABSTAIN: None.

**ITEM NO. 3** Fisher Residence (PA2010-034)  
3725 Ocean Boulevard

Staff report and a brief PowerPoint Presentation was provided by Assistant Planner Kay Sims.

The applicant requests approval of a variance to allow a proposed single-family dwelling to exceed the 24-foot height limit for flat roofs within the R-1 (Single-Unit Residential) Zoning District. Additionally, the proposed single-family dwelling would exceed the “top of curb” height limit for properties on the bluff side of Ocean Boulevard. The applicant also requests a modification permit to allow the proposed single-family dwelling to encroach into the required 10-foot front and 4-foot side setbacks (caissons), and site-retaining walls (and caissons) with related railings adjacent to the side property lines which exceed the 6-foot height limit allowed within side setback areas.

Chair McDaniel opened the public hearing and public comments.

Desmond Fischer, property owner and applicant, stated that the existing property is a “blight” in the community and that his proposed project will provide an enhanced visual presentation for both the City and the adjacent residents, discussed the three matters for which he is requesting variances, that he has tried to address all matters presented by adjacent neighbors, and to mitigate noise, traffic, and other construction impacts for the duration of the project.

Discussion ensued between the Commissioners and the applicant regarding fireplace “exhaust” vents for the project and the preliminary title report and associated potential litigation matters. The applicant stated that all matters related to the Title had been resolved and were reflected in the title report submitted with his application.

John McInnes, architect for the applicant’s subject property, presented exhibits of the proposed project and addressed the proposed solutions to concerns expressed by adjacent property owners. Mr. McInnes noted that the project will not require closure of Ocean Boulevard, construction access is not proposed to extend beyond the “predominant line of development” existing on the property, and that a study was conducted regarding various driveway alternatives and percentages of slope and the design, as submitted, was the best alternative.

Discussion ensued among the Commission and Mr. McInnes regarding the proposed ceiling heights and required emergency exit provisions and equipment.

Dan Purcell, Corona del Mar resident, supported the applicant’s efforts to mitigate the construction impacts of the project.

Donald Stoughton, adjacent property owner located directly across Ocean Boulevard from the subject project, spoke in support of the project.

Dorris Stoughton, adjacent property owner located directly across Ocean Boulevard from the subject project, stated that another project on the bluff side of Ocean Boulevard took six years for completion of construction and inquired as to whether the timeline for the construction on this project could be reduced.

Chair McDaniel closed the public comments and the public hearing.

Acting Planning Director Campbell noted that there is no limitation on the building activities once a building permit is issued and work commences within one hundred eighty days. It is expected that once the project commences, construction work should be continuous until the project is completed.

Chair McDaniel reopened the public hearing and public comments to allow the applicant to state that he anticipates the project to be completed, barring rain impacts, in twenty-four months. Chair McDaniel then closed public comments and the public hearing.

In response to an inquiry from Commissioner Hawkins, Acting Planning Director Campbell noted that timelines for completion of exterior construction have not been implemented on projects of this size.

Commissioner Toerge stated that although an alternative location for the garage set back further from the front property toward the ocean side would allow the project to be built in compliance with existing curbside height restrictions; such a design alternative was not practical.

Commissioner Hawkins stated that the required findings for the modification permit could be made, but that an additional statement to support encroachments into the side-yard setbacks should be added to the first finding for the modification permit in the final documents.

Commissioner Ameri suggested a future discussion by the Planning Commission to review construction project timelines.

**Motion** made by Commissioner Toerge and seconded by Commissioner Hawkins, and carried (5 – 0) to adopt a resolution approving Variance No. VA2010-001 and Modification Permit No. 2010-006, with the amendments with the following addition:

- *“Below ground caissons and shoring walls within the side setbacks are necessary to provide stability for construction of the project due to the steep slope of the subject lot. The above ground retaining walls are necessary along the side property lines to provide stability for the site and to support an ingress and egress stairway from the lower area of the lot to the higher area at the front of the property and Ocean Boulevard. The retaining walls along the side property lines are also necessary to provide privacy for residents of the subject property and neighboring properties.”*

|          |                                                |
|----------|------------------------------------------------|
| AYES:    | Ameri, Hawkins, McDaniel, Toerge, and Unsworth |
| NOES:    | None.                                          |
| ABSENT:  | Eaton and Hillgren                             |
| ABSTAIN: | None.                                          |

**ITEM NO. 4** Review of Preliminary Fiscal Year 2011-2012 Capital Improvement Program (PA2007-131)

Staff report was provided by Gregg Ramirez, Senior Planner.

Review of the City's Capital Improvement Program (CIP) is required by the City Charter and State Statute. The purpose of the review is to determine consistency with the General Plan and to make recommendations to the City Council concerning proposed public works projects.

Commission and staff discussion ensued regarding the proposed cost (\$400,000) for the study, concept, and design for a Lifeguard Headquarters project, whether the proposed project for the Crystal Cove parking lots were consistent with the City's General Plan, and park improvements as related to the Civic Center Improvement Project.

**Motion** made by Commissioner Unsworth and seconded by Commissioner Hawkins, and carried (5 – 0) to receive and file the report, as amended by Commission Toerge, and accepted by the maker of the motion, to include the Commission's discussion on this matter, to determine that the CIP projects are consistent with the policies of the General Plan, and to report this finding to the City Council.

AYES: Ameri, Hawkins, McDaniel, Toerge, and Unsworth  
NOES: None.  
ABSENT: Eaton and Hillgren  
ABSTAIN: None.

**H. NEW BUSINESS – None.**

**I. STAFF AND COMMISSIONER ITEMS**

**ITEM NO. 5** Acting Planning Director reported on the relevant actions taken by the City Council at their recent meeting, the appointment of the new Community Development Director, and items for upcoming Planning Commission meetings.

**ITEM NO. 6** Planning Commission reports.

Commissioner Hawkins suggested the consolidation or elimination of Planning Commission Item No. 6.

**ITEM NO. 7** Announcements on matters that Commission members would like placed on a future agenda for discussion, action, or report.

Commissioner Hawkins requested an update report on the recent Planning Commission recommendations made on in-lieu parking fees, waiver of fees for Planning Commission appeals, and the minor use permit for late hour restaurants.

**ITEM NO. 8** Request for excused absences.

An excused absence was granted for Commissioner Hillgren related to the June 9, 2011, Planning Commission meeting.

**ADJOURNMENT** - The Planning Commission adjourned at 9:30 p.m. to 4:00 p.m. on June 9, 2011.

**CITY OF NEWPORT BEACH  
PLANNING COMMISSION STAFF REPORT**

June 9, 2011 Meeting

Agenda Item \_\_\_\_

**SUBJECT:** Pemstein Residence Minor Use Permit and Variance - (PA2010-173)  
2430 Holiday Road  
▪ Minor Use Permit No. UP2010-040  
▪ Variance No. VA2011- 005

**APPLICANT:** Harold Pemstein

**PLANNER:** Erin M. Steffen, Planning Technician  
(949) 644-3234, Esteffen@newportbeachca.gov

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**PROJECT SUMMARY**

A minor use permit to allow for the retention of an as-built second dwelling unit to be converted to a senior accessory dwelling unit (AKA "granny unit") and a related variance to allow for the construction of a garage addition to encroach 2 feet into the required 10-foot easterly side setback.

The application also includes ten (10) other variance requests to allow for the retention of the following as-built structures:

1. An 8-foot high arbor with a footprint of 48 square feet that encroaches 13 feet into the 15-foot front setback, where the Zoning Code limits the height of such structures to 9 feet and a maximum footprint of 16 square feet.
2. An 8-foot high arbor with a footprint of 48 square feet that encroaches 10 feet into the westerly 10-foot side setback, where the Zoning Code limits the height of such structures to 9 feet and a maximum footprint of 16 square feet.
3. An 8-foot high arbor with a footprint of 48 square feet that encroaches 10 feet into the 10-foot rear setback, where the Zoning Code limits the height of such structures to 9 feet and a maximum footprint of 16 square feet.
4. An 8-foot high arbor with a footprint of 48 square feet that encroaches 10 feet into the easterly 10-foot side setback, where the Zoning Code limits the height of such structures to 9 feet and a maximum footprint of 16 square feet.
5. A 55-inch high brick wall that encroaches 5 feet into 15-foot front setback, where the Zoning Code limits the height of such structures to 42 inches.
6. An 8-foot high wall that encroaches 10 feet into the westerly 10-foot side setback, where the Zoning Code limits the height of such structures to 6 feet.

7. An 8-foot high wall that encroaches 10 feet into the 10-foot rear setback, where the Zoning Code limits the height of such structures to 6 feet.
8. An 8-foot high wall that encroaches 10 feet into the easterly 10-foot side setback, where the Zoning Code limits the height of such structures to 6 feet.
9. An 8-foot-3-inch high fireplace that encroaches 8 feet into the westerly 10-foot side setback, where the Zoning Code limits the height of such structures to 6 feet.
10. A 129-square-foot (footprint of 148 square feet under roof), 11-foot-4-inch high storage building that encroaches 5 feet into both the 10-foot easterly side setback and 10-foot rear setback, where the Zoning Code limits the height of such structures to 6 feet.

The application also indicates the existence of an 8-foot high arbor with a footprint of 48 square feet that encroaches into the required front and easterly side setback, where the Zoning Code limits the height of such structures to 9 feet and a maximum footprint of 16 square feet. The applicant has indicated that this arbor will be removed. Therefore, it is not included in the variance request.

### **RECOMMENDATION**

- 1) Conduct a public hearing; and
- 2) Adopt Resolution No. \_\_\_\_ approving Minor Use Permit No. UP2010-040 for the granny unit and approving Variance No. VA2011-005 only for the construction of the garage addition to encroach 2 feet into the required 10-foot easterly side setback, while denying the encroachment request of the arbors, walls, fireplace, and storage building (Attachment No. PC 1).

### **INTRODUCTION**

#### **Project Setting and Background**

The subject property is a 9,450-square-foot lot located within the R-1-10,000 (Single-Unit Residential) Zoning District. The lot is relatively flat, rectangular in shape, and developed with a nonconforming two-story, 2,695-square-foot dwelling. The existing dwelling is nonconforming because it encroaches into the easterly and westerly required 10-foot side setbacks, 2 feet and 5 feet, respectively. The subject parcel was part of the June 1968 Moden Annexation.

The dwelling has been altered, without the benefit of permits, to create a second dwelling unit within a portion of the three-car garage, which reduced the number of garage spaces from 3 to 1. Access to the second dwelling unit is provided by either of two separate entry doors located on the easterly side of the building within the side setback.



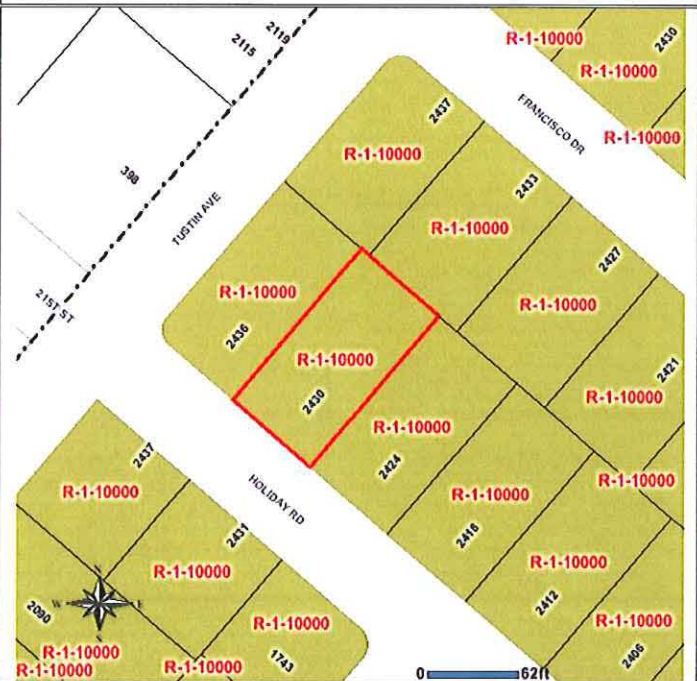
### VICINITY MAP



### GENERAL PLAN



### ZONING



| LOCATION | GENERAL PLAN                | ZONING                               | CURRENT USE             |
|----------|-----------------------------|--------------------------------------|-------------------------|
| ON-SITE  | RS-D (Single-Unit Detached) | R-1-10,000 (Single-Unit Residential) | Two-Unit Residential    |
| NORTH    | RS-D (Single-Unit Detached) | R-1-10,000 (Single-Unit Residential) | Single-Unit Residential |
| SOUTH    | RS-D (Single-Unit Detached) | R-1-10,000 (Single-Unit Residential) | Single-Unit Residential |
| EAST     | RS-D (Single-Unit Detached) | R-1-10,000 (Single-Unit Residential) | Single-Unit Residential |
| WEST     | RS-D (Single-Unit Detached) | R-1-10,000 (Single-Unit Residential) | Single-Unit Residential |

The other lots in the neighborhood are similar in size and shape and are developed with one and two-story, single-unit dwellings. The majority of the homes on these lots are also nonconforming with respect to required side setbacks.

### Project Description

The applicant is requesting a minor use permit to retain the as-built second dwelling unit by converting it to a granny unit. The applicant is also requesting to allow or retain several encroachments all of which require variance approval. Due to the large number of these encroachments, staff has separated the discussion into two parts 1) the granny unit and its related garage encroachment and 2) all other encroachments not associated with the granny unit.

## **DISCUSSION**

### **Granny Unit and Related Garage Encroachment**

#### Granny Unit Minor Use Permit

#### *Development Standards*

Pursuant to Section 20.48.200 (Senior Accessory Dwelling Units) of the Zoning Code, specific standards must be met prior to the occupancy of a granny unit. Table 1 below outlines those standards and how the project complies.

**Table 1**

| <b>Standards for Granny Units</b>                                                                                                                                                  | <b>Project Compliance</b>                                                                                                                                                                                                                                      |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1. Shall comply with the maximum height limits (24 feet for a flat roof and 29 feet for a sloped roof) in the zoning district in which they are located.                           | <b><u>Complies:</u></b> A portion of the existing residential structure, which does not exceed the height limit, will be converted to accommodate the proposed granny unit.                                                                                    |
| 2. Shall comply with the setback requirements (front 15 feet, sides 10 feet, and rear 10 feet) applicable to the zoning district in which they are located.                        | <b><u>Complies:</u></b> A portion of the existing structure, which encroaches 2 feet into the easterly side setback, will be converted to accommodate the proposed granny unit. The creation of the granny unit will not intensify or expand the encroachment. |
| 3. A minimum lot size of 5,450 square feet shall be required in order to establish a granny unit.                                                                                  | <b><u>Complies:</u></b> The subject property is approximately 9,450 square feet in area.                                                                                                                                                                       |
| 4. Each granny unit shall provide a minimum of 600 square feet of floor area and a maximum of 640 square feet as measured from within the surrounding perimeter walls of the unit. | <b><u>Complies:</u></b> The proposed granny unit is 625 square feet.                                                                                                                                                                                           |

**Table 1 - Continued**

| Standards for Granny Units                                                                                                                            | Project Compliance                                                                                                                                                                                                                                                                                                           |
|-------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 5. <i>The principal dwelling unit or the granny unit shall be continuously occupied by at least 1 person having an ownership interest in the lot.</i> | <b><u>Complies:</u></b> Occupancy and ownership verification will take place prior to the final of building permits. The approval of the minor use permit is conditioned so that the principal dwelling unit or the granny unit shall be continuously occupied by at least 1 person having an ownership interest in the lot. |
| 6. <i>At least 1 parking space is required for the granny unit and 2 garage spaces are required for the principal dwelling unit.</i>                  | <b><u>Complies:</u></b> The applicant is proposing a new two car garage for the principal dwelling unit and a carport space for the proposed granny unit. With approval of Variance No. VA2011-005, which is discussed below, the garage will be allowed to encroach 2 feet into the required 10-foot easterly side setback. |

*Minor Use Permit Findings*

Additionally, pursuant to Section 20.52.020 F. of the NBMC, the following findings shall be met to approve a minor use permit for a granny unit:

- 1. The use is consistent with the General Plan and any applicable specific plan.*
- 2. The use is allowed within the applicable zoning district and complies with all other applicable provisions of this Zoning Code and the Municipal Code.*
- 3. The design, location, size, and operating characteristics of the use are compatible with the allowed uses in the vicinity.*
- 4. The site is physically suitable in terms of design, location, shape, size, operating characteristics, and the provisions of public and emergency vehicle (e.g., fire and medical) access and public services and utilities.*
- 5. Operation of the use at the location proposed would not be detrimental to the harmonious and orderly growth of the City, or endanger, jeopardize, or otherwise constitute a hazard to the public convenience, health, interest, safety, or general welfare of persons residing or working in the neighborhood of the proposed use.*

In summary, staff believes all the findings for approval can be made and supports this determination with the facts outlined in the attached resolution (Attachment No. PC 1). As outlined in Table 1, the proposed granny unit complies with all development standards. The site is located in the Single-Unit Residential (R-1-10,000) Zoning District with a General Plan designation Single-Unit Residential Detached (RS-D), which allows granny units upon approval of a minor use permit. The project will comply with all applicable single-family development regulations, except those existing nonconforming structure conditions, which will not be intensified or expanded. Adequate public and emergency vehicle access, public services, and utilities are provided.

Staff did examine concerns about noise and privacy expressed by the abutting neighbor directly east of the proposed granny unit. The granny unit and adjacent home are approximately 11 feet apart and separated by an existing 6-foot high property line wall. The concerns are due to the increased activity within the side yard due to the location of the second unit's entry doors. However, staff believes the Zoning Code's standards for granny units, including limiting the occupancy to one or two persons, will reduce potential conflicts with the abutting property.

#### Garage Encroachment Variance

The variance request for the 2-foot garage encroachment is due to the proposed garage addition, which will provide the required parking for the principal dwelling and proposed granny unit. Pursuant to Section 20.40.030 (Requirements for Off-Street Parking), at least 1 parking space is required for the granny unit and 2 garage spaces are required for the principal dwelling unit.

It should be noted that the 2-foot garage encroachment under the previous Zoning Code, which expired in November 2011, was allowed in this district. Pursuant to Section 20.50.030 of the previous Zoning Code, an addition to the principal building was allowed to be constructed in the R-1-10,000 District (formally known as R-1-B-2) to the side yard setback line in effect at the time the principal building was constructed. Since this provision was not included with the updated Zoning Code, the 2-foot garage encroachment now requires a variance. Furthermore, the encroachment requires a variance because there is a limit on the amount of deviation to development standards that can be approved with a modification permit under the current Zoning Code, which went into effect November 2010. Modifications are limited to not more than a ten (10) percent deviation on certain development standards, including encroachments into the required setbacks.

It should also be noted that although the garage addition is proposed to comply with the 15-foot front setback of the R-1-10,000 Zoning District, parking will not be allowed on the driveway. Pursuant to Section 20.40.090 C.3.a (Parking Standards for Residential Uses) parking or storage in required front setbacks areas is only allowed on driveways in front of garages that are setback a minimum of 20 feet from the front property line. Additionally, the site currently only provides a two-car driveway approach and may need to be widened to provide adequate access to the new two-car garage and granny parking space given the reduced distance to the proposed parking as compared to the existing. The width of the driveway approach will be subject to standard Public Works requirements and no impediments are known.

#### *Variance Findings*

Pursuant to Section 20.52.090.F of the Zoning Code, the Planning Commission must make the following findings before approving the aforementioned variance:

1. *That there are special or unique circumstances or conditions applicable to the subject property (e.g. location, shape, size, surrounding, topography, or other physical features) that do not apply generally to other properties in the vicinity under an identical zoning classification.*
2. *That strict compliance with Zoning Code requirements would deprive the subject property of privileges enjoyed by other properties in the vicinity and under an identical zoning classification.*
3. *That the granting of the Variance is necessary for the preservation and enjoyment of substantial property rights of the applicant.*
4. *That the granting of the Variance will not constitute a grant of special privilege inconsistent with the limitations on other properties in the vicinity and in the same zoning district.*
5. *That the granting of the Variance will not be detrimental to the harmonious and orderly growth of the City, or endanger, jeopardize, or otherwise constitute a hazard to the public convenience, health, interest, safety, or general welfare of persons residing or working in the neighborhood.*
6. *Granting of the Variance will not be in conflict with the intent and purpose of this Section, this Zoning Code, the General Plan, or any applicable specific plan.*

Staff believes all the findings for approval of the proposed garage encroachment can be made and supports this determination with the facts outlined in the attached resolution (Attachment No. PC 1). The garage will be constructed in line with the existing building and located 8 feet from the easterly property line. This encroachment will be similar to others in the neighborhood as a majority of the adjacent properties have buildings setback less than the required 10 feet. Under the Zoning Code in effect prior to November 25, 2010, additions to principal structures were permitted by right provided the additions maintain the setback of the existing structure. The nonconforming setbacks exist throughout the neighborhood as a result of the 1968 annexation and subsequent change to side setback requirements.

#### **Variance Request - Arbors, Walls, Fireplace, and Storage Building**

The applicant also requests variance approval to retain ten (10) other as-built accessory structures. These structures were all built without the benefit of permits and encroach into the required setbacks areas. Table 2 below outlines all the requests as well as the related Zoning Code required standards. Photos depicting the items listed below are attached (Attachment PC No. 3). The applicant's attached plans (Attachment No. 2) have also been highlighted with reference numbers that correspond to the numbered items listed below.

**Table 2**

| Applicant's Request to allow for the retention of the following as-built structures: |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | Zoning Code Requirement                                                                                                                                                                                                                                                                                                                                                   |          |                |                     |           |                                      |        |
|--------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------|----------------|---------------------|-----------|--------------------------------------|--------|
| Arbors                                                                               | <ol style="list-style-type: none"><li>1. 8-foot high arbor* with a footprint of 48 square feet that encroaches 13 feet into the 15-foot front setback.*</li><li>2. 8-foot high arbor* with a footprint of 48 square feet that encroaches 10 feet into the westerly 10-foot side setback;</li><li>3. 8-foot high arbor* with a footprint of 48 square feet that encroaches 10 feet into the 10-foot rear setback; and</li><li>4. 8-foot high arbor* with a footprint of 48 square feet that encroaches 10 feet into the easterly 10-foot side setback.</li></ol>                                                                                                                                                   | <p>Pursuant to Section 20.30.110 D.2.b., Arbors, trellises, and similar garden structures may be allowed to encroach into required front, side, and rear setback area subject to the following limits:</p> <p>(1) The maximum footprint of the structure shall not exceed 16 square feet; and</p> <p>(2) The maximum height of the structure shall not exceed 9 feet.</p> |          |                |                     |           |                                      |        |
| Walls                                                                                | <ol style="list-style-type: none"><li>5. 55-inch high brick wall that encroaches 5 feet into 15-foot front setback.</li><li>6. 2-foot wood fence extension* mounted on top of the existing 6-foot high block wall, for an overall height of 8 feet that encroaches 10 feet into the westerly 10-foot side setback;</li><li>7. 2-foot wood fence extension* mounted on top of the existing 6-foot high block wall, for an overall height of 8 feet that encroaches 10 feet into the 10-foot rear setback.</li><li>8. 2-foot wood fence extension* mounted on top of the existing 6-foot high block wall, for an overall height of 8 feet that encroaches 10 feet into the easterly 10-foot rear setback.</li></ol> | <p>Pursuant to Section 20.30.030 A.1., the maximum height of fences, hedges, and walls is as follows:</p> <table><tr><th>Location</th><th>Maximum Height</th></tr><tr><td>Front setback areas</td><td>42 inches</td></tr><tr><td>Rear and interior side setback areas</td><td>6 feet</td></tr></table>                                                                    | Location | Maximum Height | Front setback areas | 42 inches | Rear and interior side setback areas | 6 feet |
| Location                                                                             | Maximum Height                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                                                                                                                                                                                                                                                                                                                                                                           |          |                |                     |           |                                      |        |
| Front setback areas                                                                  | 42 inches                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                                                                                                                                                                                                                                                                                                                                                                           |          |                |                     |           |                                      |        |
| Rear and interior side setback areas                                                 | 6 feet                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                                                                                                                                           |          |                |                     |           |                                      |        |
| Fireplace                                                                            | <ol style="list-style-type: none"><li>9. To retain an as-built 8-foot 3-inch high freestanding fireplace that encroaches 8 feet into the westerly 10-foot side setback.</li></ol>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | <p>Pursuant to Section 20.30.110 D.8.b., freestanding fireplaces (gas only) with a maximum height of 6 feet shall be allowed to encroach into the required side or rear setback area provided a minimum 36-inch clear path of travel is maintained adjacent to any habitable structures.</p>                                                                              |          |                |                     |           |                                      |        |
| Storage Building                                                                     | <ol style="list-style-type: none"><li>10. To retain an as-built 129-square-foot (footprint of 148 square feet under roof) and 11-foot 4-inch high storage building that encroaches 5 feet into both the 10-foot easterly side and 10-foot rear setback.</li></ol>                                                                                                                                                                                                                                                                                                                                                                                                                                                 | <p>Pursuant to Section 20.30.110 D.2.a., Accessory structures not more than 6 feet in height and totaling no more than 150 square feet per structure, may be located within a required side or rear setback area other than those abutting an alley.</p>                                                                                                                  |          |                |                     |           |                                      |        |

\*The screen planting growing on the structure further increases the effective height of the element.

### *Variance Findings*

As with the variance request associated with the garage encroachment, the Planning Commission must make the same variance findings listed on page 7 of this report before approving the variance requests outlined in Table 2.



Staff believes the findings cannot be made to support any of the encroachments listed in Table 2. The property is relatively flat, rectangular in shape, and comparable in size to other lots in the neighborhood. The R-1-10,000 Zoning District does have larger side setbacks (10-foot) as compared to most other properties in the City, which have side setbacks between 3 and 6 feet. However, this standard is not a unique characteristic resulting in any necessity to warrant approval for the encroachment of the arbors, the walls, the fireplace, or the storage building. These structures are neither required nor necessary for the enjoyment of a substantial property right. Although, the accessory structures are existing and have not proven detrimental to the property or neighborhood, their existence does not set a precedent for approval.

Furthermore, if desired, the accessory structures can all be (re)designed to comply with the requirements of the Zoning Code. For instance, the footprint of the arbors can be reduced and additional arbors can also be constructed since there is no limit on the number of these structures in the required setbacks. The walls and fireplace can be removed or reduced in height from 8 feet to 6 feet. And, the storage building can be removed or reduced in height from 8 feet to 6 feet or relocated to area not within the required setbacks.

### Conclusion

Staff recommends that the Planning Commission approve Minor Use Permit No. UP2010-040 for the granny unit and Variance No. VA2011-005 for the 2-foot garage encroachment. Staff also recommends that the Planning Commission deny the encroachment request of the arbors, walls, fireplace, and storage building because the required findings for approval cannot be made. Additionally, all the aforementioned encroachments that are existing and have been recommended for denial need to be removed from the subject property or redesigned to comply with the development standards of the Zoning Code should the Planning Commission take the recommended action.

### Alternatives

The Planning Commission may modify the approval or conditions of approval or deny the minor use permit and/or the variance application.

If the Planning Commission decides to approve any element of the project that staff recommends for denial, the Planning Commission must identify facts in support of the required findings for those elements.

Should the Planning Commission take action on any alternatives, staff will return with a revised resolution for consideration at the next available meeting.

Environmental Review

The project is categorically exempt under Section 15303, of the California Environmental Quality Act (CEQA) Guidelines - Class 3 (New Construction or Conversion of Small Structures). The scope of the work is limited to a garage addition and conversion and alterations of an existing structure to accommodate a granny unit. Also, included in the request is to retain several accessory structures including arbors, walls, a fireplace, and storage building.

Public Notice

Notice of this hearing was published in the Daily Pilot, mailed to property owners within 300 feet of the property, and posted at the site a minimum of ten (10) days in advance of this hearing, consistent with the Municipal Code. Additionally, the item appeared upon the agenda for this meeting, which was posted at City Hall and on the City website.

Prepared by:

  
Erin M. Steffen, Planning Technician

Submitted by:

  
Gregg Ramirez, Senior Planner

ATTACHMENTS

- PC 1 Draft Resolution with Findings and Conditions
- PC 2 Project Plans
- PC 3 Project Photos
- PC 4 Applicant's Project Description and Justification Statement



# **Attachment No. PC 1**

Draft Resolution with Findings and Conditions

## **RESOLUTION NO.**

### **A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH APPROVING MINOR USE PERMIT NO. UP2010-040 FOR A SENIOR ACCESSORY DWELLING UNIT AND APPROVING VARIANCE NO. VA2011-005 FOR ONLY THE 2-FOOT GARAGE ADDITION ENCROACHMENT FOR THE PROPERTY LOCATED AT 2430 HOLIDAY ROAD (PA2010-173)**

THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH HEREBY FINDS AS FOLLOWS:

#### **SECTION 1. STATEMENT OF FACTS.**

1. An application was filed by Harold Pemstein, with respect to the property located at 2430 Holiday Road, and legally described as Lot 9 of Tract 2052 requesting approval of a minor use permit and variance.
2. The applicant proposes a minor use permit to allow for the retention of an as-built second dwelling unit to be converted to a senior accessory dwelling unit (granny unit) and a related variances to allow for the construction of a garage addition to encroach 2 feet into the required 10-foot easterly side setback.

The application also includes ten (10) other variance requests to allow for the retention of the following as-built structures:

1. An 8-foot high arbor with a footprint of 48 square feet that encroaches 13 feet into the 15-foot front setback, where the Zoning Code limits the height of such structures to 9 feet and a maximum footprint of 16 square feet.
2. An 8-foot high arbor with a footprint of 48 square feet that encroaches 10 feet into the westerly 10-foot side setback, where the Zoning Code limits the height of such structures to 9 feet and a maximum footprint of 16 square feet.
3. An 8-foot high arbor with a footprint of 48 square feet that encroaches 10 feet into the 10-foot rear setback, where the Zoning Code limits the height of such structures to 9 feet and a maximum footprint of 16 square feet.
4. An 8-foot high arbor with a footprint of 48 square feet that encroaches 10 feet into the easterly 10-foot side setback, where the Zoning Code limits the height of such structures to 9 feet and a maximum footprint of 16 square feet.
5. A 55-inch high brick wall that encroaches 5 feet into 15-foot front setback, where the Zoning Code limits the height of such structures to 42 inches.
6. An 8-foot high wall that encroaches 10 feet into the westerly 10-foot side setback, where the Zoning Code limits the height of such structures to 6 feet.

7. An 8-foot high wall that encroaches 10 feet into the 10-foot rear setback, where the Zoning Code limits the height of such structures to 6 feet.
  8. An 8-foot high wall that encroaches 10 feet into the easterly 10-foot side setback, where the Zoning Code limits the height of such structures to 6 feet.
  9. An 8-foot-3-inch high fireplace that encroaches 8 feet into the westerly 10-foot side setback, where the Zoning Code limits the height of such structures to 6 feet.
  10. A 129-square-foot (footprint of 148 square feet under roof), 11-foot-4-inch high storage building that encroaches 5 feet into both the 10-foot easterly side setback and 10-foot rear setback, where the Zoning Code limits the height of such structures to 6 feet.
3. The application also indicates the existence of an 8-foot high arbor with a footprint of 48 square feet that encroaches into the required front and easterly side setback, where the Zoning Code limits the height of such structures to 9 feet and a maximum footprint of 16 square feet. The applicant indicated that this arbor will be removed. Therefore, it was not included in the variance request.
  4. The subject property is located within the Single-Unit Residential (R-1-10000) Zoning District and the General Plan Land Use Element category is Single-Unit Residential Detached (RS-D).
  5. The subject property is not located within the coastal zone.
  6. A public hearing was held on June 9, 2011, in the City Hall Council Chambers, 3300 Newport Boulevard, Newport Beach, California. A notice of time, place and purpose of the meeting was given in accordance with the Newport Beach Municipal Code. Evidence, both written and oral, was presented to, and considered by, the Planning Commission at this meeting.

## SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

The project is categorically exempt under Section 15303, of the California Environmental Quality Act (CEQA) Guidelines - Class 3 (New Construction or Conversion of Small Structures). The scope of the work is limited to a garage addition and alterations to an existing structure to accommodate a granny unit. Also included is removal or alterations to several detached accessory structures including arbors, walls, a fireplace, and storage building.

### SECTION 3. REQUIRED FINDINGS.

#### *For Minor Use Permit No. UP2010-040 (Senior Accessory Dwelling Unit)*

Pursuant to Section 20.52.020 F. of the Newport Beach Municipal Code (NBMC), the following findings and decisions shall be met to approve a minor use permit for a granny unit. The findings and facts in support of such findings are listed and discussed below:

#### Finding:

*A. The use is consistent with the General Plan and any applicable specific plan.*

#### Facts in Support of Finding:

- A-1. The Land Use Element of the General Plan designates the site Single-Unit Residential Detached (RS-D). The proposed granny unit is allowed upon approval of a minor use permit within this designation. General Plan Policy LU6.2.4 recognizes that certain provisions of State law supersede local land use regulations, including the ability to add granny units in single-family residential areas. Approval of Minor Use Permit No. UP2010-040, as conditioned and under the circumstances of the case, will not be detrimental to the health, safety, peace, morals, comfort, and general welfare of persons residing and working in the neighborhood.
- A-2. The subject property is not part of a specific plan area.

#### Finding:

*B. The use is allowed within the applicable zoning district and complies with all other applicable provisions of this Zoning Code and the Municipal Code.*

#### Facts in Support of Finding:

- B-1. The proposed granny unit is located in the Single-Unit Residential (R-1-10000) Zoning District, which allows for "Senior Accessory Dwelling Units" upon approval of a minor use permit. The project is designed in accordance with the objectives of Chapter 20.48.200 (Senior Accessory Dwelling Units), which establishes procedures and specific development standards for granny units.
- B-2. The lot is relatively flat, rectangular in shape, and developed with a nonconforming two-story, 2,695-square-foot dwelling. The principal structure is nonconforming because it encroaches into the easterly and westerly required 10-foot side setbacks, 2 feet and 5 feet, respectively. The subject parcel was part of the June 1968 Moden Annexation.
- B-3. The area of the existing structure converted to a granny unit encroaches 2 (two) feet into the easterly side setback. The creation of the granny unit will not alter or intensify this encroachment.

- B-4. The 9,450 square foot lot is large enough to accommodate the additional parking required for the principal dwelling unit and proposed granny unit.

Finding:

- C. The design, location, size, and operating characteristics of the use are compatible with the allowed uses in the vicinity.*

Facts in Support of Finding:

- C-1. The project, as conditioned, will comply with all applicable single-family development regulations in the Zoning Code and specified in Chapter 20.48.200 for granny units, except those existing nonconforming conditions, which will not be intensified or expanded.
- C-2. The proposed garage addition complies with the front setback requirement and with approval of Variance No. VA2011-005 will be allowed to encroach 2 feet into the required 10-foot easterly side setback. This encroachment allows the garage to be constructed in line with the existing building and the side setback line in effect at the time the principal building was constructed.
- C-3. The granny unit will be established with an existing building and does not require new constructions other than the addition of a one-story garage, which can be accommodated as adequate lot area exists.

Finding:

- D. The site is physically suitable in terms of design, location, shape, size, operating characteristics, and the provisions of public and emergency vehicle (e.g., fire and medical) access and public services and utilities.*

Facts in Support of Finding:

- D-1. The site is a residential lot in an existing subdivision and is suitable for the proposed granny unit.
- D-2. Adequate public and emergency vehicle access, public services, and utilities are provided.
- D-3. All improvements associated with the project will comply with all Building, Public Works, and Fire Codes. The project will comply with all ordinances of the City and all conditions of approval.
- D-4. The lot is adequate in size to accommodate the proposed granny unit and the parking required for the principal dwelling unit and the proposed granny unit.

Finding:

- E. Operation of the use at the location proposed would not be detrimental to the harmonious and orderly growth of the City, or endanger, jeopardize, or otherwise constitute a hazard to the public convenience, health, interest, safety, or general welfare of persons residing or working in the neighborhood of the proposed use.*

Facts in Support of Finding:

- E-1. The project has been reviewed and includes conditions of approval to ensure that potential conflicts with the surrounding land uses are minimized to the greatest extent possible. Also, the goal of providing senior housing opportunities will be obtained, while minimizing negative impacts associated with the project.
- E-2. The project includes a residential use located within a residentially designated area. The granny unit is restricted to one or two adult occupants who are 55 years of age or older as regulated by the Zoning Code.

*For Variance No. VA2011-005 (Garage Encroachment)*

In accordance with Section 20.52.090.F of the Newport Beach Municipal Code, the following findings and facts in support of such findings are set forth for the variance:

Finding:

- A. That there are special or unique circumstances or conditions applicable to the subject property (e.g. location, shape, size, surrounding, topography, or other physical features) that do not apply generally to other properties in the vicinity under an identical zoning classification.*

Facts in Support of Finding:

- A-1. The subject lot is relatively flat, rectangular in shape, and developed with a nonconforming two-story, 2,695-square-foot dwelling. The structure is nonconforming because it encroaches into the easterly and westerly required 10-foot side setbacks, 2 feet and 5 feet, respectively. The subject parcel was part of the June 1968 Moden Annexation.
- A-2. A majority of the surrounding properties also have buildings setback less than the required 10 feet. This nonconforming condition exists throughout the neighborhood as a result of the 1968 annexation and subsequent change to side setback requirements. Additionally, prior to November 25, 2010, an addition to the principal building was allowed to be constructed in the R-1-10,000 District (formally known as R-1-B-2) to the side yard setback line in effect at the time the principal building was constructed. This code provision was not included with the updated Zoning Code, which went into effect in November 2010.

- A-3. The establishment of the granny unit requires a garage addition to accommodate the required parking for the principal dwelling unit and proposed granny unit. Pursuant to Section 20.40.030 (Requirements for Off-Street Parking), at least 1 parking space is required for the granny unit and 2 garage spaces are required for the principal residential dwelling unit. The applicant is proposing a two car garage for the principal dwelling and one parking space for the proposed granny unit. The garage for the principal dwelling will encroach 2 feet into the required 10-foot easterly side setback.

Finding:

- B. That strict compliance with Zoning Code requirements would deprive the subject property of privileges enjoyed by other properties in the vicinity and under an identical zoning classification.*

Fact in Support of Finding:

- B-1. The garage addition would be constructed in line with the existing building and the side setback line in effect at the time the principal building was constructed. This design will be consistent with the development pattern in the neighborhood and will allow for the construction of a garage addition to provide the required parking for the principal dwelling unit.

Finding:

- C. That the granting of the Variance is necessary for the preservation and enjoyment of substantial property rights of the applicant.*

Fact in Support of Finding:

- C-1. With the construction of the garage encroachment, the goal of providing senior housing opportunities will be provided, while providing the required parking.

Finding:

- D. That the granting of the Variance will not constitute a grant of special privilege inconsistent with the limitations on other properties in the vicinity and in the same zoning district.*

Facts in Support of Finding:

- D-1. The granting of the variance allows the property owner to its rights of establishing a garage addition and maintains parity with the setbacks enjoyed by nearby properties.

Finding:

- E. That the granting of the Variance will not be detrimental to the harmonious and orderly growth of the City, or endanger, jeopardize, or otherwise constitute a hazard to the public*

*convenience, health, interest, safety, or general welfare of persons residing or working in the neighborhood.*

Facts in Support of Finding:

- E-1. As conditioned, the project will, to the greatest extent possible, ensure potential conflicts with the surrounding land uses are minimized. The garage addition is single story and would be at least 8 feet from the neighboring property and would minimize impacts to light and air.
- E-2. The proposed design and location of the garage addition does not interfere with the provision of safe sight distances.
- E-3. The encroachment of the proposed garage addition is consistent with the design of development on neighboring properties along Holiday Road.

Finding:

*F. Granting of the Variance will not be in conflict with the intent and purpose of Section 20.52.090 of the Zoning Code, the Zoning Code, the General Plan, or any applicable specific plan.*

Facts in Support of Finding:

- F-1. The granting of this variance will not conflict with the Land Use Element of the General Plan, which designates the site for Single-Unit Residential Detached (RS-D) use, or the Zoning Code, which designates the site as Single-Unit Residential (R-1-10,000). These designations provide for the existing single unit dwelling and the proposed senior accessory dwelling upon approval of a minor use permit. The proposed garage encroachment is appurtenance to the dwelling units and is therefore consistent with these designations and will not change the use of the property.
- F-2. The subject property is not located within a specific plan area.

*For Variance No. VA2011-005 (Arbors, Walls, Fireplace, and Storage Building)*

Facts for Denial:

- 1. The property is relatively flat, rectangular in shape, and comparable in area to other lots in the area. Although, the R-1-10,000 Zoning District does have larger required side setbacks (10-foot) as compared to most other properties in the City, which have setbacks between 3 and 6 feet, the Planning Commission does not consider this a unique circumstance resulting in any necessity to warrant deviating from the applicable development standards for the approval for the arbors, property line walls, fireplace, or storage building. If desired, they can be designed to comply with applicable Zoning Code requirements.



2. Although the arbors, walls, fireplace, and storage building are existing and have not proven detrimental to the property or neighborhood, their existence does not set a precedent for approval of the proposed variance. Furthermore, they are neither required by code nor necessary for the enjoyment of a substantial property right.

**SECTION 4. DECISION.**

**NOW, THEREFORE, BE IT RESOLVED:**

1. The Planning Commission of the City of Newport Beach hereby approves Minor Use Permit No. UP2010-040 for the granny unit and approves the request for the garage encroachment while denying all other variance requests included in Variance No. VA2011-005, subject to the conditions set forth in Exhibit A, which is attached hereto and incorporated by reference.
2. This action shall become final and effective fourteen days after the adoption of this Resolution unless within such time an appeal is filed with the City Clerk in accordance with the provisions of Title 20 Planning and Zoning, of the Newport Beach Municipal Code.

**PASSED, APPROVED AND ADOPTED THIS 9th DAY OF JUNE, 2011.**

AYES:

NOES:

RECUSED:

ABSENT:

EXCUSED:

BY: \_\_\_\_\_  
Early McDaniel, Chairman

BY: \_\_\_\_\_  
Michael Toerge, Secretary

## EXHIBIT "A"

### CONDITIONS OF APPROVAL

1. The development shall be in substantial conformance with the approved site plan, floor plans, and building elevations stamped and dated with the date of this approval. (Except as modified by applicable conditions of approval.)
2. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
3. The granny unit shall provide a minimum of 600 square feet of floor area and a maximum of 640 square feet as measured from within the surrounding perimeter walls of the unit.
4. The principal dwelling unit or the granny unit shall be continuously occupied by at least 1 person having an ownership interest in the lot.
5. The granny unit shall be limited to the use of one or two persons at least 55 years in age.
6. Prior to the issuance of a building and/or grading permit for a granny unit, the property owner shall record a deed restriction with the County Recorder's Office. The form and content of which shall be satisfactory to the City Attorney and that states that under no circumstances shall the granny unit be rented to or otherwise occupied by any person or persons less than 55 years of age. Said document shall also contain all conditions of approval imposed by this minor use permit. This deed restriction shall remain in effect so long as the granny unit exists on the property.
7. Prior to the final inspection of building permits of the granny unit by a City Building Inspector, the property owner shall submit to the Planning Director the names and birth dates of any and all occupants of the granny unit constructed pursuant to this chapter to verify occupancy by a person or persons of at least 55 years in age. Thereafter, verification will be on an annual basis. Upon any change of tenants, the property owner shall notify the City immediately. This information shall be submitted in writing and contain a statement signed by the property owner certifying under penalty of perjury that all of the information is true and correct.
8. In addition to the parking required for the primary residence, there shall be at least 1 independently accessible parking space for the granny unit. This additional parking space shall be kept free, clear, and accessible for the parking of a vehicle at all times. The independent accessible parking space provided for the granny unit shall meet the minimum size requirements specified by Chapter 20.40 of the Zoning Code. The proposed garage addition shall meet the minimum size requirements specified by Chapter 20.40 for the Zoning Code.
9. The width of the driveway approach shall meet standard Public Work's requirements.

10. Within 60 days after the effective date of the action for Minor Use Permit No. UP2010-026 and Variance No. VA2011-005, the property owner or an authorized representative shall remove or obtain a building permit for the as-built barbeque located in the westerly 10-foot side setback on the rear half of the lot.
11. Within 60 days after the effective date of the action for Minor Use Permit No. UP2011-026 and Variance No. VA2011-005, the property owner or an authorized representative shall obtain a building permit if necessary and remove or reconstruct the items listed below to conform to the requirements of the Zoning Code:
  - a. The 8-foot high arbor with a footprint of 48 square feet that encroaches into the required 15-foot front setback and 10-foot easterly side setback.
  - b. The 8-foot high arbor with a footprint of 48 square feet that encroaches 13 feet into the 15-foot front setback.
  - c. The 8-foot high arbor with a footprint of 48 square feet that encroaches 10 feet into the westerly 10-foot side setback.
  - d. The 8-foot high arbor with a footprint of 48 square feet that encroaches 10 feet into the 10-foot rear setback.
  - e. The 8-foot high arbor with a footprint of 48 square feet that encroaches 10 feet into the easterly 10-foot side setback.
  - f. The 55-inch high brick wall that encroaches 5 feet into 15-foot front setback.
  - g. The 8-foot high wall that encroaches 10 feet into the westerly 10-foot side setback.
  - h. The 8-foot high wall that encroaches 10 feet into the 10-foot rear setback.
  - i. The 8-foot high wall that encroaches 10 feet into the easterly 10-foot side setback.
  - j. The 8-foot-3-inch high fireplace that encroaches 8 feet into the westerly 10-foot side setback.
  - k. The 129-square-foot (footprint of 148 square feet under roof), 11-foot 4-inch high storage shed that encroaches 5 feet into both the 10-foot easterly side and 10-foot rear setback.
12. Upon completion of the private improvements on the site, the applicant shall be responsible for the repair or replacement of public improvements surrounding the subject property that are damaged by the private construction project. The extent of the remedial work includes but is not limited to the repair or reconstruction of curb, gutter, sidewalk, driveway approach, parkway landscaping, and street pavement, unless otherwise approved by the Public Works Inspector.
13. All improvements shall be constructed as required by Ordinance and the Public Works Department.

14. An encroachment permit shall be obtained prior to the performance of any work activities within the public right-of-way.
15. The applicant shall comply with all federal, state, and local laws. Material violation of any of those laws in connection with the use may be cause for revocation of the minor use permit.
16. This approval was based on the particulars of the individual case and does not in and of itself or in combination with other approvals in the vicinity or Citywide constitute a precedent for future approvals or decisions.
17. The minor use permit may be modified or revoked by the City Council or Planning Commission should they determine that the proposed uses or conditions under which it is being operated or maintained is detrimental to the public health, welfare or materially injurious to property or improvements in the vicinity or if the property is operated or maintained so as to constitute a public nuisance.
18. Prior to the issuance of a building permit, the applicant shall pay any unpaid administrative costs associated with the processing of this application to the Planning Division.
19. The applicant is required to obtain all applicable permits from the Building Division of the Community Development Department. The construction plans must comply with the most recent, City-adopted version of the California Building Code.
20. Minor Use Permit No. UP2010-040 shall expire unless exercised within 24 months from the date of approval as specified in Section 20.54.060 of the Newport Beach Municipal Code, unless an extension is otherwise granted.
21. To the fullest extent permitted by law, applicant shall indemnify, defend and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to the City's approval of the Pemstein Residence Minor Use Permit and Variance including, but not limited to Minor Use Permit No. UP2010-040 and Variance No. VA2011-005 (PA2010-173). This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by applicant, City, and/or the parties initiating or bringing such proceeding. The applicant shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. The applicant shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition.

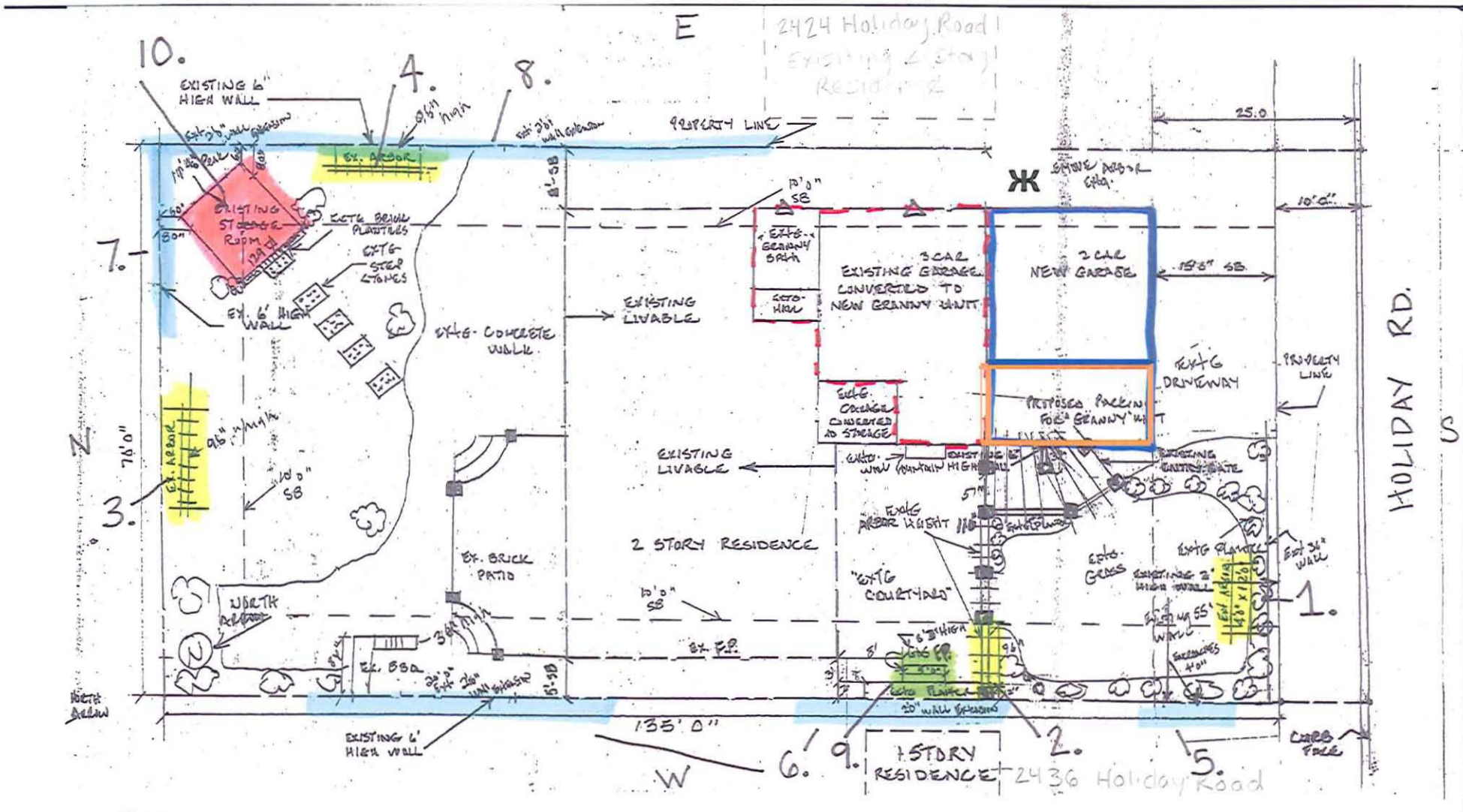
# **Attachment No. PC 2**

Project Plans



Site Plan – 2430 Holiday Road

Use Permit No. UP2010-040  
Variance No. VA2011-005  
(PA2010-173)



Key

Setback Line

X 8-foot high arbor with a footprint of 48 square feet that encroaches into the required front and easterly side setback, which will be removed.

Granny Unit and Related Encroachment

- As-built second dwelling unit to be converted to a granny unit
- Proposed Two-Car Garage Addition for Principal Dwelling Unit, which encroaches 2 feet into the easterly 10-foot side yard setback
- Proposed Parking Space for Granny Unit

Existing Granny Unit Entries

Other Wall and Structure Variance Requests

| To allow for the retention of the following as-built structures: |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | Zoning Code Requirement                                                                                                                                                                                                                                                                                                                                                               |          |                |                     |           |                                      |        |
|------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------|----------------|---------------------|-----------|--------------------------------------|--------|
| Arbors                                                           | <div>1. 8-foot high arbor with a footprint of 48 square feet that encroaches 13 feet into the 15-foot front setback*</div> <div>2. 8-foot high arbor with a footprint of 48 square feet that encroaches 10 feet into the westerly 10-foot side setback*</div> <div>3. 8-foot high arbor with a footprint of 48 square feet that encroaches 10 feet into the 10-foot rear setback*</div> <div>4. 8-foot high arbor with a footprint of 48 square feet that encroaches 10 feet into the easterly 10-foot side setback*</div>                                                                                                                                                          | <div>Pursuant to Section 20.30.110 D.2.b., Arbors, trellises, and similar garden structures may be allowed to encroach into required front, side, and rear setback area subject to the following limits:</div> <div>(1) The maximum footprint of the structure shall not exceed 16 square feet; and</div> <div>(1) The maximum height of the structure shall not exceed 9 feet.</div> |          |                |                     |           |                                      |        |
| Walls                                                            | <div>5. 55-inch high brick wall that encroaches 5 feet into 15-foot front setback</div> <div>6. 2-foot wood fence extension mounted on top of the existing 6-foot high block wall, for an overall height of 8 feet that encroaches 10 feet into the westerly 10-foot side setback*</div> <div>7. 2-foot wood fence extension* mounted on top of the existing 6-foot high block wall, for an overall height of 8 feet that encroaches 10 feet into the 10-foot rear setback*</div> <div>8. 2-foot wood fence extension* mounted on top of the existing 6-foot high block wall, for an overall height of 8 feet that encroaches 10 feet into the easterly 10-foot rear setback*</div> | <div>Pursuant to Section 20.30.030 A.1., the maximum height of fences, hedges, and walls is as follows:</div> <table><tr><th>Location</th><th>Maximum Height</th></tr><tr><td>Front setback areas</td><td>42 inches</td></tr><tr><td>Rear and interior side setback areas</td><td>6 feet</td></tr></table>                                                                            | Location | Maximum Height | Front setback areas | 42 inches | Rear and interior side setback areas | 6 feet |
| Location                                                         | Maximum Height                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                                                                                                                                                                                                                                                                                                                                                                                       |          |                |                     |           |                                      |        |
| Front setback areas                                              | 42 inches                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                                                                                                                                                                                                                                                                                                                                                                                       |          |                |                     |           |                                      |        |
| Rear and interior side setback areas                             | 6 feet                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                                                                                                                                                                                                                                                                                                                                                                                       |          |                |                     |           |                                      |        |
| Fire-place                                                       | <div>9. To retain an as-built 8-foot 3-inch high freestanding fireplace that encroaches 8 feet into the westerly 10-foot side setback.</div>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | <div>Pursuant to Section 20.30.110 D.8.b., freestanding fireplaces (gas only) with a maximum height of 6 feet shall be allowed to encroach into the required side or rear setback area provided a minimum 36-inch clear path of travel is maintained adjacent to any habitable structures.</div>                                                                                      |          |                |                     |           |                                      |        |
| Storage Building                                                 | <div>10. To retain an as-built 129-square-foot (footprint of 148 square feet under roof) and 11-foot 4-inch high storage building that encroaches 5 feet into both the 10-foot easterly side and 10-foot rear setback.</div>                                                                                                                                                                                                                                                                                                                                                                                                                                                        | <div>Pursuant to Section 20.30.110 D.2.a., Accessory structures not more than 6 feet in height and totaling no more than 150 square feet per structure, may be located within a required side or rear setback area other than those abutting an alley.</div>                                                                                                                          |          |                |                     |           |                                      |        |

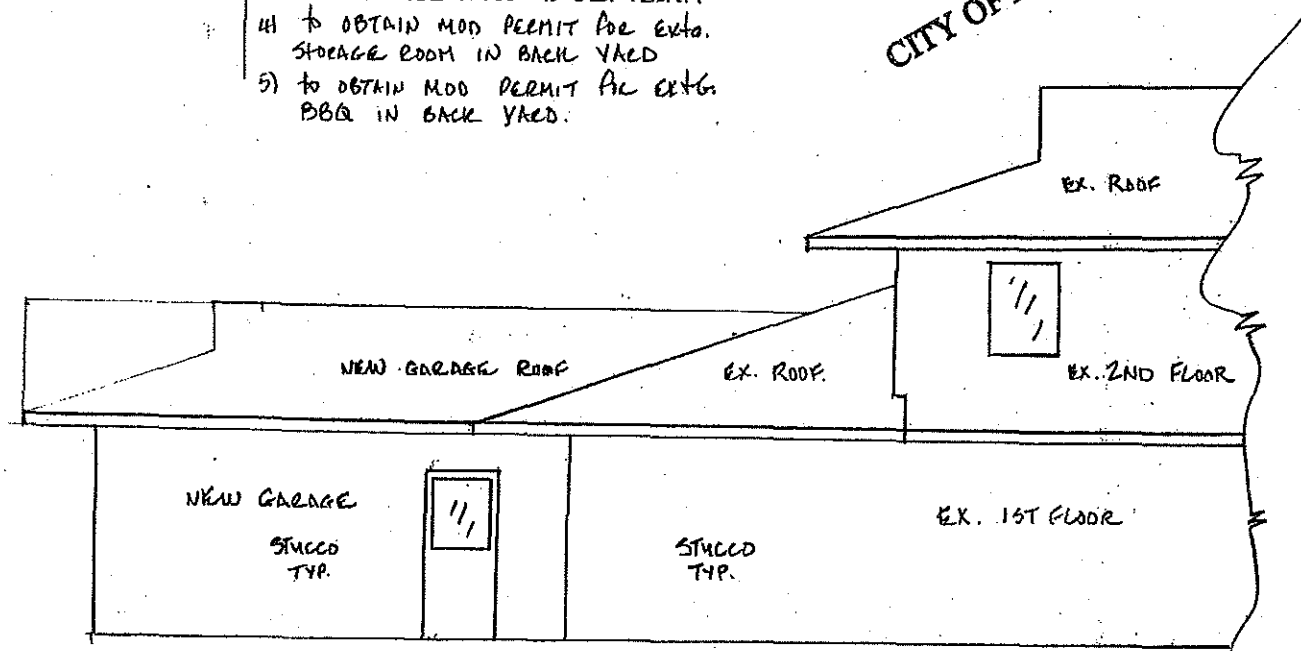
\*The screen planting growing on the structure further increases the effective height of the element



# SCOPE OF WORK

- 1) TO CONVERT EXISTING GRANNY UNIT TO PERMITTED LIVABLE
- 2) TO ADD NEW GARAGE ON TO EXIST. HOME AT EXIST. GARAGE
- 3) TO MODIFY EXIST. ARBORES IN BACK AND SIDE YARDS TO GET PERMIT
- 4) TO OBTAIN MOD PERMIT FOR EXIST. STORAGE ROOM IN BACK YARD
- 5) TO OBTAIN MOD PERMIT FOR EXIST. BBQ IN BACK YARD.

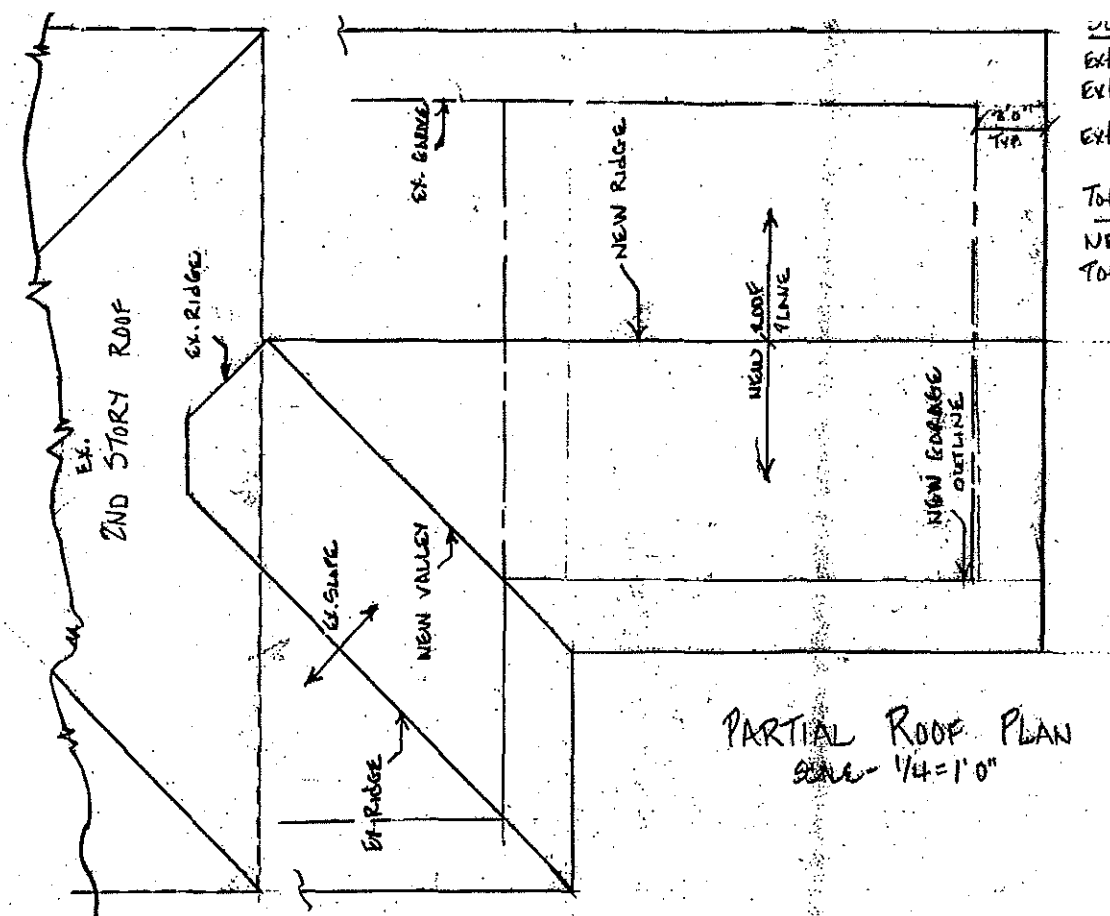
RE.  
PLANNING DEPT.  
FEB 18 2011  
CITY OF NEWPORT BEACH



PARTIAL RIGHT ELEVATION  
SCALE = 1/4" = 1' 0"

## DESIGN DATA

FRONT SET BACK - 15' 0"  
RIGHT SIDE SET BACK - 8' 0"  
LEFT SIDE SET BACK - 5' 0"  
REAR SET BACK - 0' 0"



PARTIAL ROOF PLAN  
SCALE = 1/4" = 1' 0"

EXIST. LIVABLE - 2492 SQ  
EXIST. GARAGE CONVERTED TO GRANNY - 6400 SQ  
EXIST. GARAGE CONVERTED TO STORAGE - 72 SQ  
TOTAL LIVABLE - 3204 SQ  
NEW GARAGE - 400 SQ  
TOTAL STRUCTURAL SQUARE FOOTAGE - 3604 SQ

LEGEND  
LOT 9, TRACT 1

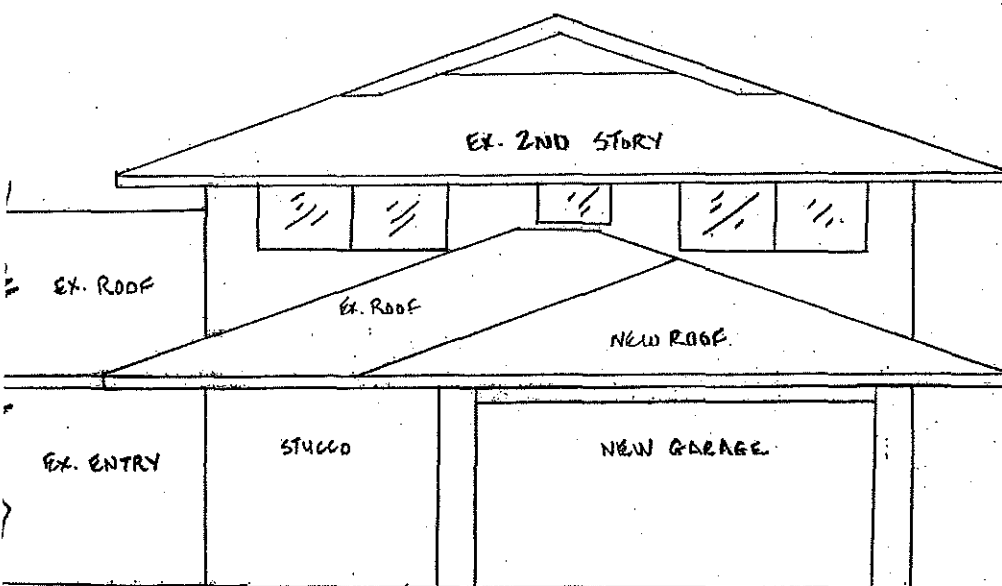
DESIGNED BY  
DRAFTING BY

REMODEL

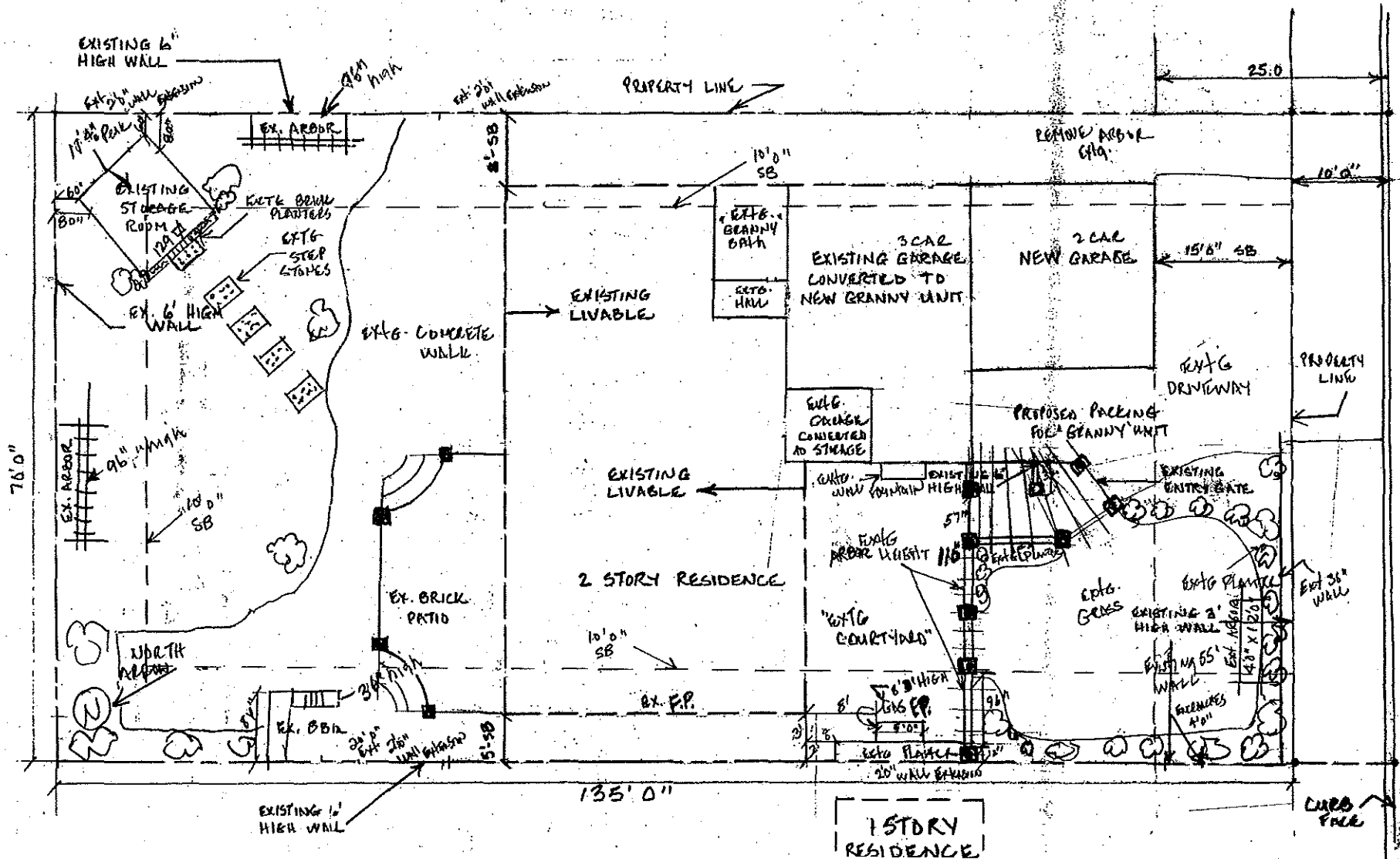
DATE

SITE PLAN

DATE

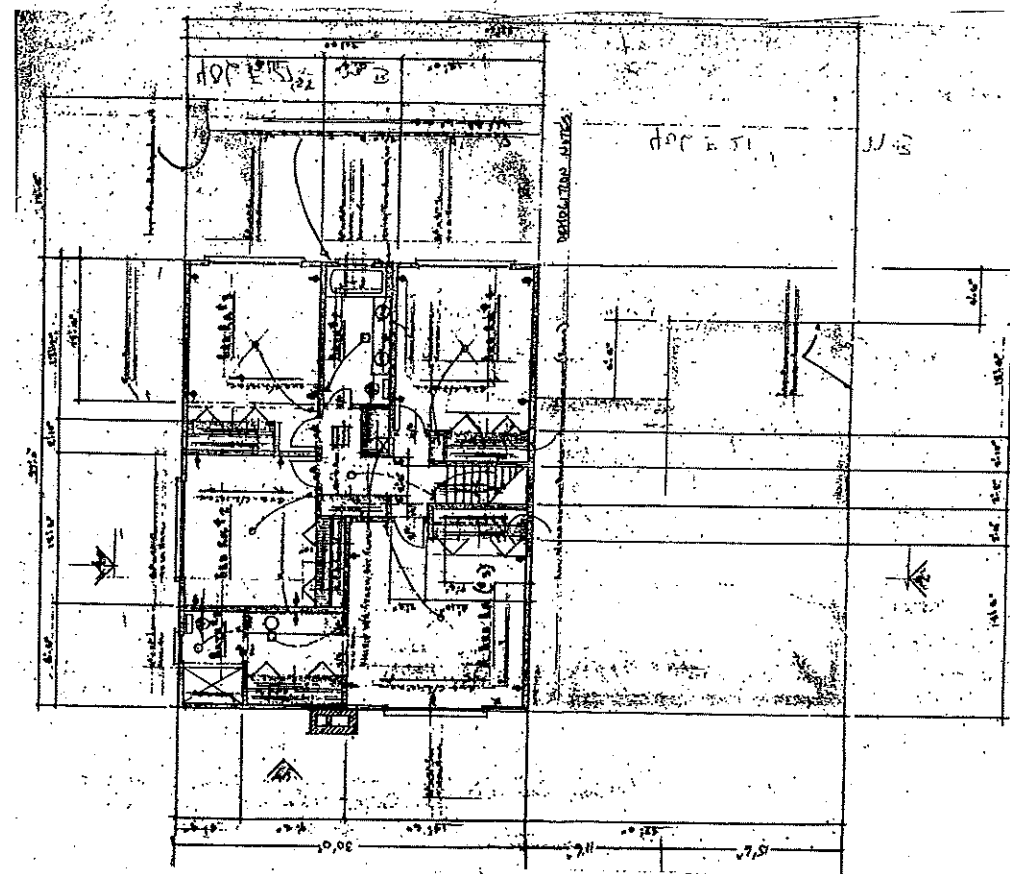


PARTIAL FRONT ELEVATION  
SCALE = 1/4" = 1' 0"



HOLIDAY RD.

2200



2

AS BUILT DEMO PLAN  
WOOD PLAN

BEHSTEIN RESIDENCE  
2430 HUNTER RD.  
NEWBURY BEACH 92660  
PHONE: 214 2011

OWNER - BRUDER  
DRAWN BY:  
WALDO PERNSTEIN  
*Waldo PerNSTEIN*



## **Attachment No. PC 3**

Project Photos

## 2430 Holiday Road



**Easterly Side Yard between Entry to Granny Unit (2430 Holiday Road) and Adjacent Neighbor located at 2424 Holiday Road)**





## Item No. 1, 3, and 4 (Arbors)

Item No. 4 is shown but Items No. 1 and 3 are similar in nature

1. An 8-foot high arbor with a footprint of 48 square feet that encroaches 13 feet into the 15-foot front setback, where the Zoning Code limits the height of such structures to 9 feet and a maximum footprint of 16 square feet.
3. An 8-foot high arbor with a footprint of 48 square feet that encroaches 10 feet into the 10-foot rear setback, where the Zoning Code limits the height of such structures to 9 feet and a maximum footprint of 16 square feet.
4. An 8-foot high arbor with a footprint of 48 square feet that encroaches 10 feet into the easterly 10-foot side setback, where the Zoning Code limits the height of such structures to 9 feet and a maximum footprint of 16 square feet.





## Item No 2 (Arbor)

An 8-foot high arbor with a footprint of 48 square feet that encroaches 10 feet into the westerly 10-foot side setback, where the Zoning Code limits the height of such structures to 9 feet and a maximum footprint of 16 square feet.





## Item No. 5 (Wall)

A 55-inch high brick wall that encroaches 5 feet into 15-foot front setback, where the Zoning Code limits the maximum permitted height to 42 inches.





## Items No. 6 and 7 (Walls)

6. An 8-foot high wall that encroaches 10 feet into the westerly 10-foot side setback, where the Zoning Code limits the maximum permitted height to 6 feet.
7. An 8-foot high wall that encroaches 10 feet into the 10-foot rear setback, where the Zoning Code limits the maximum permitted height to 6 feet.





## Item No. 8 (Fireplace)

An 8-foot 3-inch high fireplace that encroaches 8 feet into the westerly 10-foot side setback, where the Zoning Code limits the maximum permitted height to 6 feet.





## Item No. 9 (Shed)

A 129-square-foot (footprint of 148 square feet under roof), 11-foot 4-inch high storage shed that encroaches 5 feet into both the 10-foot easterly side setback and 10-foot rear setback, where the Zoning Code limits the maximum permitted height to 6 feet.



## **Attachment No. PC 4**

Applicant's Project Description and Justification  
Statement

## JUSTIFICATIONS AND FINDINGS FOR VARIANCE

PROPERTY LOCATION: 2430 HOLIDAY ROAD  
NEWPORT BEACH, CA. 92660

OWNERS: HAROLD PEMSTEIN  
DEBORAH LUCAS

DATE: March 22, 2011

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PLANNING DEPARTMENT  
MAR 22 2011  
CITY OF NEWPORT BEACH

The following constitutes the justifications and findings as required for the variance for projects at the above address;

### 1) TRELLIS/ARBOR in the Front Setback

The location of this arbor is in keeping with other properties in the area. This arbor can be reduced to eight feet in height. This arbor, if kept, will provide great enjoyment for this applicant, and will not be a "special privilege" inconsistent with any other properties in the vicinity. This arbor is more than 8 years old and to date has not been detrimental to the general welfare of the neighborhood. This arbor is not in conflict with the Zoning Code or General Plan.

### 2) TRELLISES/ARBORS in the Side and Rear Setbacks

The arbor in the front side setback **will be removed** at the outset of construction of the new garage.

The rear yard arbors are in keeping with other properties in the area. These arbors can be reduced to eight feet in height. These arbors, if kept, will provide great enjoyment for this applicant, and will not be a "special privilege" inconsistent with any other properties in the vicinity. These arbors are more than 8 years old and to date have not been detrimental to the general welfare of the neighborhood. These arbors are not in conflict with the Zoning Code or General Plan.

### 3) FIREPLACE in side Yard Setback

The 5 year old existing fireplace is a gas burning fireplace that meets the code in all areas except in height. The 8-foot 3 inch chimney is necessary to the design and drafting of the heat expelled from this fireplace. In addition, the property adjacent to the property in question consists of a garage with no accessible opening within the entire side adjacent to the fireplace. This fireplace is similar to other fireplaces located within the vicinity. It provides an enjoyment of our property rights and does not grant any special privilege that others don't already enjoy. There is no hazard to the general welfare of others in the vicinity, and does not conflict with the Zoning Code or General Plan.

#### 4) STORAGE SHED in Side and Rear Setback

This storage unit is used **solely** for storage. The quality of the construction and the attractive appearance are in keeping with the high standards of the vicinity as set by the privilege of residency in this area. The primary obstacle of this storage unit is related to height and location. The location, with a minimum of six feet from the property line, gives the placement of this unit the continued use of the remaining portion of the rear yard. The height of this unit gives the ability of ease of access to the property stored in the unit. Other units exist in the vicinity that are not of the same quality and appearance and this unit is not detrimental to the welfare of the residents in the vicinity. The extra height was for the attractive roofing finish and does not conflict with the Zoning Code or The General Plan.

#### 5) WALLS in Side and Rear Setbacks

The two foot additions to the existing six foot block walls adjacent to the property to the east, west, and north were requested by the homeowners adjacent at their specific location. If these additions to the walls that provide privacy for the existing homeowners are a problem for the City; then they **will be** removed during construction of new garage. In so much as they were requested by the current adjacent homeowners, there is no harm to their welfare, they give privileges to the property owners, are similar to other properties in the vicinity, and therefore are not in conflict with the Zoning Code or General Plan.

#### 6) WALL in Front Setback

The attractive brick wall that escalates in height, to under 6 feet at a mere four feet into the required 15 foot setback has existed for approximately 10 years. It has given privacy to the neighbor to the west, has not caused a detriment to the properties or residences in the vicinity, is like many other properties in the vicinity, allows for the privilege and preservation of property rights, and is not in conflict with the Zoning Code or General Plan.

Correspondence  
Item No. 2a  
Pemstein Residence  
PA2010-173

June 6, 2011

RE: Variance for Harold Pemstein

Dear Planning Commission:

I am begging the Commission not to make Mr. Pemstein remove any height on the west side of his property. I bought my home on this busy corner because of the pool, large back yard, and other amenities. This home seemed to provide enough privacy, which is very important on a busy corner. Harold's wall covered with the extra height, holding growing vines and bushes affords me almost complete privacy. No one in Harold's yard can look into my patio and pool area and I cannot look into his. Harold did lower the height on the west side at the rear of his property. This really upset me, because I lost a lot of privacy. I can now see into the neighbor's 2<sup>nd</sup> story windows and they can see right into my kitchen. See pictures. If he lowers all the height, the view from my patio will be awful. See pictures.

The privacy I have on my side yard and back yard allow me to put up with the inconvenience of living on this very busy corner. Passersby throw their trash onto the front yard and bottles and trash into the landscaping on the Tustin side and even over the wall into my back yard. But I get exercise cleaning up after them.

My home has already dropped in value, due to the economy and also increased traffic, which is only going to get worse since 5 new homes are almost finished across from the field at Kaiser on 21<sup>st</sup> Street(which is Holiday Road). They have double garages, that is 10 cars and there will be visitors. City of Newport has not allowed Holiday Road to have any speed reducing things.

Again I beg you not to make Harold lower the height on the west side.



Doris Waterman  
Harold's neighbor at 2436 Holiday Road

CITY OF NEWPORT BEACH  
JUN 08 2011  
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View from Patio at 2436 Holiday Rd.  
Since Harold Penstein took down height, I can see  
into neighbor's window & they can see into even my kitchen.  
From my kitchen I can see into their windows

Cannot block pool  
& wires in any way.

All Waterman

Wendover



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JUN 08 2011

CITY OF NEWPORT BEACH



View from patio of 2436 Holiday Rd.  
Perfect privacy. Great!  
D. Waterman



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JUN 08 2011

CITY OF NEWPORT BEACH



View across pool at 2436 Holiday Rd.  
a lot of privacy, Great!  
Allstonian



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JUN 08 2011

CITY OF NEWPORT BEACH



View across pool at 2436 Holiday Rd.  
Since Mr. Feinstein took off height on wall I can see into  
2 windows, at night they can look right into my kitchen.  
D. Waterman



PLANNING DEPARTMENT

JUN 08 2011

CITY OF NEWPORT BEACH



View across pool at 2436 Holiday Rd.  
No way to block sight of wires & telephone pole;  
whatever, Al Waterman



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JUN 08 2011

CITY OF NEWPORT BEACH



View from patio at 2436 Holiday Road.  
No height on wall, so I see a ladder & 2 bicycles  
But I can live w/ this All Waterman



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PLANNING DEPARTMENT

JUN 08 2011

CITY OF NEWPORT BEACH



East side of 2436 Holiday  
I can look into bedroom  
across the street, but  
I have privacy on  
the left side.  
D. Wetstein

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JUN 08 2011

CITY OF NEWPORT BEACH





View from patio of 2436 Holiday Rd.  
Eight blocks all view of Harold Pimstein's house. Great!

Waterman



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JUN 08 2011

CITY OF NEWPORT BEACH



View from pool deck at 2436 Holiday Rd,  
Harold Bernstein's height of vines blocks view of his house!  
Great! All Waterman



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PLANNING DEPARTMENT

JUN 08 2011

CITY OF NEWPORT BEACH

**Steffen, Erin**

---

**From:** Harold Pemstein [hpemstein@gmail.com]  
**Sent:** Wednesday, June 08, 2011 3:45 PM  
**To:** Steffen, Erin  
**Subject:** PLANNING HEARING

Good afternoon Ms. Steffen.

After spending a fair amount of time on the "staff report" I find that the work necessary to complete my report will take somewhat longer than I initially thought. Therefore, I am asking for a continuance of the Planning Commission hearing scheduled for tomorrow at 4P.M.? In addition, there are a number of items in the "staff report" that I feel I will need to address or get some clarification.

Please let me know what the proper procedure is for a continuance.

Thanks for your assistance on this urgent matter.

Sincerely, Harold Pemstein

**CITY OF NEWPORT BEACH  
PLANNING COMMISSION STAFF REPORT**

June 9, 2011 Meeting  
Agenda Item 3

**SUBJECT:** Dry Dock Restaurant - PA2011-005  
2601 West Coast Highway  
Conditional Conditional Use Permit No. UP2011-001

**APPLICANT:** G.E.P. Enterprise Group

**PLANNER:** Fern Nueno, Assistant Planner  
(949) 644-3227, fnueno@newportbeachca.gov

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**PROJECT SUMMARY**

A conditional use permit application for a food service restaurant with late hours, live entertainment, alcohol sales, outdoor dining, and delivery. The application also includes a request for a parking management plan to address off-site parking, valet, and an adjustment to the off-street parking requirements. The proposed hours of operation for dining and delivery are 11:00 a.m. to 2:00 a.m., daily.

**RECOMMENDATION**

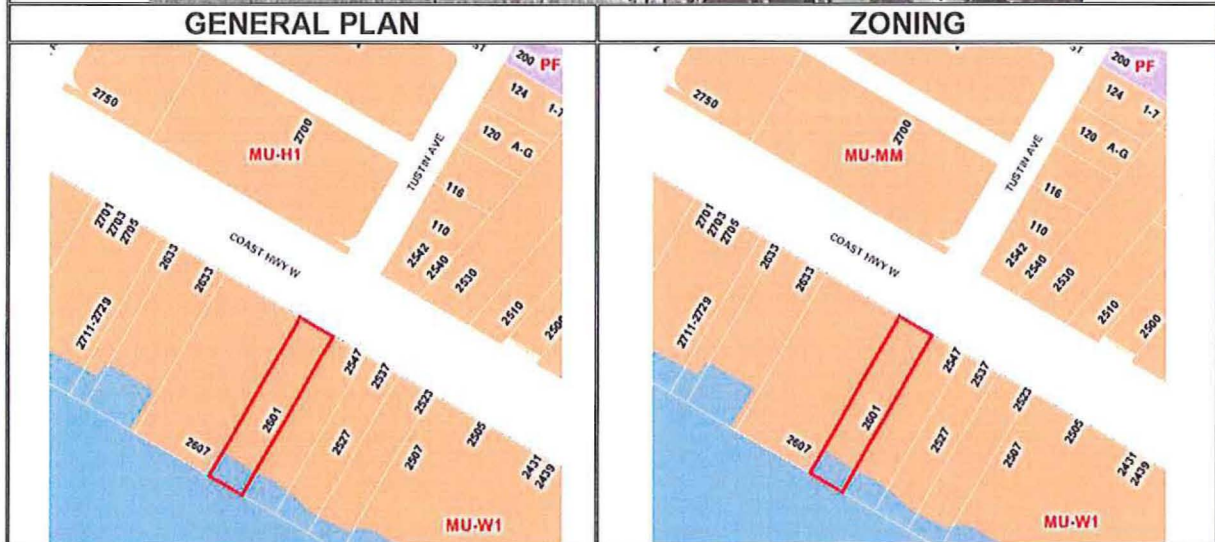
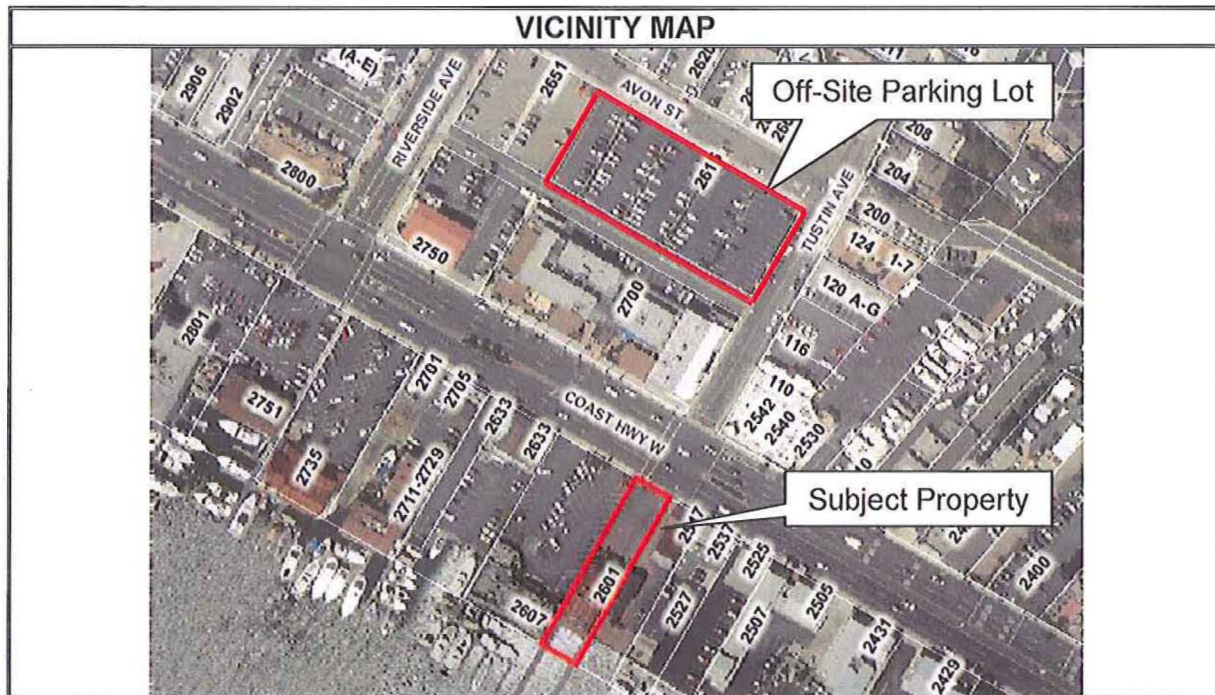
- 1) Conduct a public hearing; and
- 2) Adopt Resolution No. \_\_\_\_ approving Conditional Use Permit No. UP2011-001 No. (Attachment No. PC 1).

**INTRODUCTION**

**Project Setting**

The subject property is located on the south side of Coast Highway, directly across from Tustin Avenue, within Mariner's Mile. The property is approximately 11,949 square feet in area (50 feet wide by 240 feet deep), including a small portion that is submerged. The lot is developed with a 3,987 square foot single-story commercial restaurant building, a surface parking lot with twelve (12) parking spaces, and a boat slip. Mariners' Mile is a mixed-use area developed with primarily commercial and marine uses.





| LOCATION | GENERAL PLAN                    | ZONING                          | CURRENT USE                                            |
|----------|---------------------------------|---------------------------------|--------------------------------------------------------|
| ON-SITE  | Mixed-Use Water Related (MU-W1) | Mixed Use Water Related (MU-W1) | Vacant building, previous restaurant site              |
| NORTH    | Mixed-Use Horizontal (MU-H1)    | Mixed Use Mariners Mile         | Commercial (retail, office, restaurants)               |
| SOUTH    | NA                              | NA                              | Lido Channel                                           |
| EAST     | Mixed-Use Water Related (MU-W1) | Mixed Use Water Related (MU-W1) | Commercial (retail, office, restaurants) and apartment |
| WEST     | Mixed-Use Water Related (MU-W1) | Mixed Use Water Related (MU-W1) | Commercial (retail, office, restaurants)               |

### Project Description

The applicant requests a conditional use permit for a food service restaurant with late hours, live entertainment, alcohol sales, and outdoor dining. The applicant proposes to provide high quality barbeque for sit-down meal service and delivery. The proposed hours of operation are 11:00 a.m. to 2:00 a.m., daily. Delivery is proposed during the same hours that the restaurant is in operation. Live entertainment is proposed on Saturdays and Sundays from 2:00 p.m. to 7:00 p.m. Dancing is not requested. The applicant is requesting a Type 47 (beer, wine, distilled spirits) Alcoholic Beverage Control (ABC) License, which is for on-sale general eating place.

The application also includes a request for a parking management plan to address off-site parking, valet, and an adjustment to the off-street parking requirements. The applicant proposes to secure 20 parking spaces in an off-site lot located at Tustin Avenue and Avon Street and to provide valet parking beginning at 6:00 p.m., daily. The Zoning Code requires one (1) parking space for every 30-50 square feet of net public area, so the requirement is between 35 and 58 parking spaces. Therefore, there will be a deficiency of between 3 and 26 parking spaces.

The applicant proposes some interior alterations to the restaurant, primarily in the kitchen area. The bar and seating areas will remain generally the same as when the building was operated as Josh Slocum's. The existing building is 3,987 square feet in gross floor area, with 1719 square feet of net public (seating and customer) area and it accommodates approximately 80 seats. The addition of a waiting area/outdoor patio is requested outside of the main entrance facing the parking lot. This outdoor dining area will be 25 percent or less of the interior net public area.

### Background

The existing restaurant was originally established in 1968, prior to the requirement of a use permit for eating and drinking establishments. The site was zoned C-O-Z (Limited Commercial) which permitted restaurants provided that they met the parking requirement of one space for every three seats. At that time, the site had a total of 22 on-site parking spaces to accommodate a 66-fixed seat restaurant. Subsequently, various owners/operators have increased the seating and applied for six (6) off-site parking agreements over the years.

On October 23, 1986, the Planning Commission granted Use Permit No. UP3239 authorizing the expansion in the hours of operation of the restaurant permitting it to open at 11:00 a.m. However, in 1989, staff documented the fact that the restaurant never took advantage of the increased hours of operation, and pursuant to the conditions of approval and the Municipal Code, the Use Permit became void 24 months after its approval. The existing restaurant, thereby, had a nonconforming right to operate as a restaurant subject to the operational characteristics and restrictions of a previous off-site parking agreement because the 1986 Use Permit was void.

In 2001, the restaurant began changing its business operations by providing live music and dancing after dining hours. Table and chairs were cleared from the main dining room creating a dancing area for patrons. Recorded music was played by disc jockeys and live bands performed on weekends. The Police Department documented on several occasions that live bands have performed with sound amplification. There are no records that a Café Dance Permit and/or a Live Entertainment Permit have ever been sought or issued. The addition of live entertainment and dancing substantially changed the restaurant's original operational characteristics and a use permit was required.

On September 16, 2003, the operator filed a use permit application (UP2003-220) to allow the existing establishment to operate as a full-service restaurant and to have a nightclub operation with live entertainment and dancing nightly between the hours of 9:00 p.m. to 2:00 a.m. The application also included a modification of parking requirements because there had been a reduction in on-site parking and the combined total spaces provided on and off-site did not meet code requirements.

On May 6, 2004, the Planning Commission approved a use permit to allow the expansion of the existing restaurant and denied the request to allow the property to operate as a nightclub. The approval allowed the restaurant to increase the occupancy from 133 to 143 persons and to waive three (3) parking spaces.

On May 20, 2004, the applicant appealed the Planning Commission's decision to the City Council, due to the denial of the nightclub portion of the request. After requests for more information and continuance of the item, on August 24, 2004, the City Council denied the appeal and upheld and affirmed the decision of the Planning Commission.

Use Permit No. UP2003-220 was never exercised and subsequently expired; therefore no active use permit exists for this property.

## **DISCUSSION**

### **Analysis**

#### *Consistency with General Plan, Coastal Land Use Plan, and Zoning Code*

The subject property is designated as Mixed-Use Water Related (MU-W1) by the Land Use Element of the General Plan, which is applied to waterfront locations along Mariners' Mile Corridor in which marine-related, visitor-serving, commercial, and residential uses are allowed. The proposed project is consistent with this designation as eating and drinking establishments are visitor-serving and commercial uses. The proposed project will also have space for approximately ten (10) boats, available for patrons who choose to take a boat to the restaurant. Furthermore, Land Use Policy LU 6.19.2 (Bay Fronting Properties) encourages marine-related and visitor-serving retail,

restaurant, hotel, institutional, and recreational uses, with some allowance for residential uses.

The Coastal Land Use Plan designates the site as Mixed Use Water Related (MU-W), which is intended to provide for commercial development on or near the bay in a manner that will encourage the continuation of coastal-dependent and coastal-related uses and visitor-serving uses, as well as allow for the development of mixed-use structures with residential uses above the ground floor. The proposed eating and drinking establishment is consistent with this designation.

The Mixed-Use land use designation is implemented by the Mixed Use Water Related (MU-W1) Zoning District. Eating and drinking establishments designated as "Food Service, Late Hours" are allowed with Planning Commission or City Council approval of a conditional use permit. Facilities open to the public past 11:00 p.m. any day of the week are defined by the Zoning Code as establishments with late hours.

#### *Outdoor Dining*

The proposed outdoor dining will be located outside of the front entrance facing the parking lot. In addition to acting as an outdoor dining area, the patio will also act as a waiting area for customers waiting to be seated or those picking up to-go orders. The interior net public area proposed is 1,719 square feet, and the Zoning Code allows outdoor dining areas up to 25 percent of the interior net public area without an increase in the parking requirement. Therefore, the applicant has requested an outdoor dining area of 429 square feet (25 percent). The project plans show 480 square feet of outdoor seating area, but should the project be approved, the size would be reduced to 429 square feet or 25 percent of the interior net public area. Because of the existing configuration of the restaurant, the applicant does not think adequate room is available in the corridor for customers to wait for a table. The corridor contains the restrooms and leads to the host stand, bar, and dining area. For this reason, the outdoor dining area is proposed to alleviate potential crowding in the entry corridor. People waiting for a table or to-go orders may be offered beverages while they wait.

#### *Hours of Operation*

Pursuant to Section 20.48.090 of the Zoning Code, the Planning Commission must consider the following potential impacts upon adjacent or nearby uses when reviewing an application to allow late-hour operations:

1. *Noise from music, dancing, and voices associated with allowed outdoor uses and activities;*
2. *High levels of lighting and illumination;*

3. *Increased pedestrian and vehicular traffic activity during late and early morning hours;*
4. *Increased trash and recycling collection activities;*
5. *Occupancy loads of the use; and*
6. *Any other factors that may affect adjacent or nearby uses.*

The proposed hours of operation for restaurant dining and delivery are 11:00 a.m. to 2:00 a.m., daily. Possible noise impacts will be diminished because dancing is not proposed, thereby limiting the likelihood the establishment will evolve into a nightclub. Significant noise impacts from the proposed outdoor patio are not anticipated given the proposed location on the north side of the building facing the parking lot and West Coast Highway. The proposed use will not necessitate high levels of lighting or illumination and any outdoor lighting must conform to Zoning Code Section 20.30.070 (Outdoor Lighting). A temporary increase in traffic during late and early morning hours on weekends is expected along West Coast Highway; however, this portion of Coast Highway is a major road, so disturbances on residential streets are not expected to occur.

Should the Planning Commission approve the application, the applicant would be required to obtain an Operator License from the Police Department. The Operator License should provide for enhanced control of noise, loitering, litter, disorderly conduct, parking/circulation, and other potential disturbances resulting from the establishment, and will provide the Police Department with means to modify, suspend, or revoke the operator's ability to maintain late-hour operations.

Because of the distance to the nearest Residential Zoning District, the hours of operation for the restaurant and delivery service should not negatively impact the neighborhood. However, staff recommends a closing time of midnight for the outdoor dining area to diminish potential impacts regarding late night noise to neighbors down the street and above West Coast Highway, and any future mixed-use development.

#### *Live Entertainment*

The proposed live entertainment is requested for Saturdays and Sundays only from 2:00 p.m. to 7:00 p.m. The live entertainment will consist of a 2-3 piece group playing background music with amplification. Because of the proposed hours, the design of the restaurant, and the distance to the nearest residential uses, the proposed live entertainment should not be detrimental to the community. The restricted days and hours will prevent any potential late night impacts that could occur and will limit the possibility of the establishment having a nightclub atmosphere. Moreover, dancing is not proposed with this application. Approval of this Conditional Use Permit would not permit the establishment to operate as a bar, tavern, cocktail lounge, or nightclub, as

defined by the Municipal Code, despite the live entertainment and late operating hours. The interior dining area and bar are situated towards the water side of the property, and there is no patio along the water that would allow sounds to carry across the Lido Channel. A condition of approval has been included requiring the exterior windows to be maintained in the closed position after 11:00 p.m., daily. Although the Zoning does allow for mixed-use properties, there are not any occupied residential dwelling units in the vicinity. The property owner of the mixed-use structure to the east of the subject property has not expressed any concerns over the proposed use.

#### *Alcohol Sales*

When reviewing an application to allow an eating or drinking establishment to sell, serve, or give away alcohol, Section 20.48.090 (Eating and Drinking Establishments) of the Zoning Code requires the Planning Commission to evaluate the potential impacts upon adjacent uses (within 100 feet as measured between the nearest lot lines) and to consider the proximity to other establishments selling alcoholic beverages for either off-site or on-site consumption. The adjacent uses are food service, retail sales, and general commercial uses, which are compatible with the proposed restaurant.

In order to approve a use permit for alcohol sales, the Planning Commission must also find that the use is consistent with the purpose and intent of Section 20.48.030 (Alcohol Sales). In doing so, the follow must be considered:

- a) The crime rate in the reporting district and adjacent reporting districts as compared to other areas in the City.
- b) The numbers of alcohol-related calls for service, crimes, or arrests in the reporting district and in adjacent reporting districts.
- c) The proximity of the establishment to residential zoning districts, day care centers, hospitals, park and recreation facilities, places of worship, schools, other similar uses, and any uses that attract minors.
- d) The proximity to other establishments selling alcoholic beverages for either off-site or on-site consumption.
- e) Whether or not the proposed amendment will resolve any current objectionable conditions.

Input has been provided by the Police Department, which has reviewed the application and does not object to the operations as proposed by the applicant. All crime rate data discussed below is from 2009. The subject property is located within Reporting District (RD) 25, which includes Mariners' Mile between Tustin Avenue and Old Newport Boulevard, and Newport Heights. Refer to Attachment No. PC 5 for a map of the Reporting Districts and the comments from the Police Department.



- a) The crime rate in the reporting district and adjacent reporting districts as compared to other areas in the City.

| Reporting District | Part One Crimes<br>(Serious offenses) | Part Two Crimes<br>(All other offenses) | Part One Crimes<br>Rate (per 100,000<br>people) |
|--------------------|---------------------------------------|-----------------------------------------|-------------------------------------------------|
| 25                 | 113                                   | 88                                      | 3,868.87                                        |
| 24                 | 155                                   | 120                                     | 3,096.60                                        |
| 16                 | 167                                   | 107                                     | 6,003.49                                        |
| Newport Beach      | 2,884                                 | 3,350                                   | 3,297.31                                        |

The number of part one and part two crimes within RD 25 is lower than in the adjacent Reporting Districts, RD 24 and RD 16. The part one crimes rate within RD 25 is greater than the RD 24 crimes rate and less than the RD 16 crimes rate. The part one crimes rate in RD 25 and RD 16 is higher than that of the City as a whole due to the high concentration of commercial uses in the area. RD 25 had a total of 248 reported crimes as compared to a City-wide reporting district average of 162 reported crimes. This reporting district had 86 more crimes and is 53.09 percent above the City-wide reporting district average.

- b) The numbers of alcohol-related calls for service, crimes, or arrests in the reporting district and in adjacent reporting districts.

| Reporting District | DUI/Drunk Arrests | Total Arrests | Calls for Service |
|--------------------|-------------------|---------------|-------------------|
| 25                 | 47                | 113           | 3,049             |
| 24                 | 79                | 220           | 3,898             |
| 16                 | 110               | 323           | 3,261             |
| Newport Beach      | 1,270             | 3,595         | 69,294            |

RD 25 has significantly fewer DUI/Drunk Arrests, Total Arrests, and Calls for Service compared with RD 24 and RD 16.

- c) The proximity of the establishment to residential zoning districts, day care centers, hospitals, park and recreation facilities, places of worship, schools, other similar uses, and any uses that attract minors.

The subject property is located within a mixed use district developed primarily with commercial uses. Across the Lido Channel, the closest residential district is approximately 800 feet away. To the north, the closest residential district is almost 500 feet away. The nearest park is located on Cliff Drive above West Coast Highway and is over 500 feet from the subject property. There are no day care centers, recreation facilities, places of religious assembly, or schools in close proximity to the subject property.

- d) The proximity to other establishments selling alcoholic beverages for either off-site or on-site consumption.

| Reporting District | Active ABC Licenses | Per Capita License Ratio |
|--------------------|---------------------|--------------------------|
| 25                 | 21                  | 1 per 139 residents      |
| 24                 | 9                   | 1 per 556 residents      |
| 16                 | 6                   | 1 per 464 residents      |
| County-wide        | 5,589               | 1 per 542 residents      |

The table above represents the number of active ABC licenses for RD 25, RD 24, RD 16, and the County of Orange. RD 25 has a greater number of licenses and per capita ratio than RD 24 and RD 16. The portion of Mariners' Mile where the subject property is located contains several other restaurants, which may explain the higher number of licenses. Other establishments in the area include Rolf's Wine, Joe's Crab Shack, Billy's at the Beach, Garlic Jo's, Jack Shrimp, China Palace, Villa Nova, Chart House, and the Rusty Pelican. A retail wine store is located across the street on the corner of Tustin Avenue and West Coast Highway.

- e) Whether or not the proposed amendment will resolve any current objectionable conditions.

There are no current objectionable conditions at the subject property. While the property has had some enforcement issues in the past, the proposed use is substantially different than previous uses, notably that no dancing is proposed and live entertainment would be limited to Saturdays and Sundays from 2:00 p.m. to 7:00 p.m. The proposed Conditional Use Permit will re-establish a restaurant use in a vacant building that has been inactive for years. Approval of this application will necessitate the operator to obtain an Operator License pursuant to Chapter 5.25 of the Municipal Code, issued by the Chief of Police.

#### *Parking Requirement*

The Zoning Code requires one (1) parking space for every 30-50 square feet of net public area, so the requirement is between 35 and 58 parking spaces. The applicant is supplying 12 on-site parking spaces and 20 off-site parking spaces; therefore, there will be a deficiency of between 3 and 26 parking spaces. Based on the operational characteristics and design of the establishment, staff is recommending a parking requirement of one (1) parking space for every 40 square feet of net public area. The proposed net public area is 1,719 square feet requiring 43 parking spaces leading to a parking waiver of eleven (11) parking spaces.

Section 20.40.060 (Parking Requirements for Food Service Uses) sets guidelines for establishing parking requirements. The following information on the design



characteristics, operational characteristics, and location of the establishment were used to determine the staff recommended (1/40) parking requirement. The applicant is making the dock slips available for public parking, increasing the amount of parking available for the use and promoting the water-related use encouraged in Mariners' Mile. The outdoor dining is limited to less than 25 percent of the interior net public area. The amount of floor area devoted to live entertainment is small, and no dancing is proposed. The establishment will have some television screens, but no pool tables or other attractions are proposed. The applicant proposes to provide high end barbeque that will most likely lead to a low turnover rate. There are other nearby uses that will lead to some walk-in trade. Off-site parking and valet is addressed in the draft Parking Management Plan (Attachment No. PC 3).

The Public Works Department reviewed the application and recommends that the proposed project provide all code-required parking as determined by the Planning Division at the on-site and secured off-site locations. This would mean the applicant would need to provide 11 additional parking spaces at a secured off-site location. Additionally, General Plan Land Use Element Policy LU 6.19.5 (Parking) states, "Require adequate parking and other supporting facilities for charters, yacht sales, visitor-serving, and other waterfront uses." However, staff believes that through the Parking Management Program that includes active parking lot management through valet operations, negative impacts from a reduction of on-site parking spaces can be reduced.

#### *Parking Management Plan*

A parking management plan is necessary to mitigate impacts associated with a reduction in the number of required parking spaces. The draft Parking Management Plan (Attachment No. PC 3) includes a requirement for off-site parking and valet operations. The applicant proposes to lease 20 parking spaces from the owner of the parking lot located at 2615 Avon Street. The draft Parking Management Plan requires that any change in the terms of the lease that would affect the 20 secured parking spaces be reviewed by the Community Development Director. The off-site parking lot is less than 500 feet away from the subject property. The lot contains 122 parking spaces and serves the uses located at 2700 West Coast Highway, which is developed with a 36,000-square-foot commercial building with 22 on-site parking spaces. This commercial building houses office and retail uses and no eating and drinking establishments. All 144 spaces are required for the uses at 2700 West Coast Highway. Staff conducted a parking survey of the off-site lot counting the number of cars parked in the lot at various times throughout the week. Survey times included peak lunch and dinner hours. The results demonstrate that the highest occupancy was 67 cars on a Thursday between noon and 1:00 p.m. The average number of cars counted throughout the two week survey was 40 (33 percent occupied).

While staff does not want to encourage the use of public parking for private use, Mariners' Mile does contain on-street parking and a municipal lot near the subject

property. The applicant included information on the metered and unmetered parking in the parking management plan submitted with the application (Attachment No. PC 2). Some of this information was incorporated into the draft Parking Management Plan. The parking survey conducted by staff also included a one (1) week survey of 91 nearby public parking spaces. Most of the spaces are metered and unmetered street parking, but 16 are located within a municipal parking lot near the Tustin Avenue and Avon Street intersection. The highest number of cars was counted on a Saturday night between 8:00 p.m. and 9:00 p.m. where 73 cars were parked within the 91 available spaces. The average number of cars counted throughout the survey period was 49 (53 percent occupied).

The parking survey demonstrated that parking is available in the off-site parking lot and in nearby public parking spaces. Furthermore, the parking study conducted in 2009 by Walker Parking Consultants concluded that overall the Mariners' Mile area does not have a parking shortage. The draft Parking Management Plan will ensure that off-site parking is available for the use and that valet operations eliminate any congestion that could occur in the area due to the restaurant operations. If the valet operations are insufficient to meet the needs of the proposed use, then the valet plan and Parking Management Plan will need to be modified and reviewed by the City Traffic Engineer and Community Development Director.

The valet service will be in operation during the busiest times for the restaurant. Valet attendants will be stationed in the middle of the on-site parking lot to avoid backup onto West Coast Highway. Valet attendants will be stationed at the subject property and at the off-site lot.

### *Economic Development*

The Economic Development staff reviewed the application and supported the proposed Dry Dock project and hoped the Planning Commission would make every reasonable effort to approve the request. Economic Development staff agreed with the applicant's statement that special consideration of the site's parking deficiencies should be granted, given that the conditions of the site and operations have not changed significantly from previous restaurant operations in this location. Finally, staff believed that the restaurant's location in the heart of a commercial area along Coast Highway is appropriate for an operation with extended hours of operation and live entertainment.

### *Required Findings*

Section 20.52.020 (F) (Conditional Use Permits and Minor Use Permits), Section 20.40.100 (B) (Off-Site Parking), and Section 20.48.030 (C) (Alcohol Sales) of the Zoning Code require certain findings to be made in order to approve the project. In order to grant approval of the Conditional Use Permit, the Planning Commission must make each of the following findings:

1. *The use is consistent with the General Plan and any applicable specific plan;*
2. *The use is allowed within the applicable zoning district and complies with all other applicable provisions of this Zoning Code and the Municipal Code;*
3. *The design, location, size, and operating characteristics of the use are compatible with the allowed uses in the vicinity;*
4. *The site is physically suitable in terms of design, location, shape, size, operating characteristics, and the provision of public and emergency vehicle (e.g., fire and medical) access and public services and utilities; and*
5. *Operation of the use at the location proposed would not be detrimental to the harmonious and orderly growth of the City, or endanger, jeopardize, or otherwise constitute a hazard to the public convenience, health, interest, safety, or general welfare of persons residing or working in the neighborhood of the proposed use.*
6. *The proposed use is consistent with the purpose and intent of Section 20.48.030 (Alcohol Sales).*
7. *The parking facility is located within a convenient distance to the use it is intended to serve.*
8. *On-street parking is not being counted towards meeting parking requirements.*
9. *Use of the parking facility will not create undue traffic hazards or impacts in the surrounding area.*
10. *The parking facility will be permanently available, marked, and maintained for the use it is intended to serve.*

Staff believes that findings for approval can be made, and facts in support of the required findings are included in the draft resolution (Attachment No. PC 1). The operation of a "Food Service, Late Hours" use with alcohol sales is consistent with the purpose and intent of the Mixed-Use Water Related (MU-W1) designation of the General Plan and Zoning Code. The use is compatible with the neighborhood because the Mariners' Mile area is an established commercial area with several similar uses nearby. The existing site is located on a major road and has been utilized for restaurant uses since 1968. It should be noted that this area may see future residential development based upon the recently applied mixed use land use designation. Those projects could only be developed on lots that are a minimum of 200 feet wide; therefore, it is unlikely that such a project would abut the project site given that the lot width of abutting sites is less than 200 feet.

The applicant proposes an emphasis on upscale delivery that will specialize in items that travel well, such as baby back ribs. The delivery vehicle will load and unload on site and will not be parked in the public right-of-way. Conditions of approval related to standard operations for eating and drinking establishments have been included for the overall operations of the proposed restaurant. Conditions are included related to on-sale alcoholic beverage activities, including training of personnel who sell or serve alcoholic beverages. Adequate parking is maintained and provided by valet service in conformance with the draft Parking Management Plan. Potential noise impacts will be diminished because live entertainment is not proposed during late hours or on weekdays and dancing is not proposed. Staff recommended a condition of approval requiring the Conditional Use Permit to be reviewed by the Planning Commission within one (1) year of the restaurant being in operation in order to monitor the parking and restaurant operations and to ensure that the use has not been detrimental to the community.

The Police Department indicates it has no objections to the applicant's request. The ABC License will be conditioned appropriately to protect the health, safety, and welfare of the community. To ensure the proposed use does not create a detrimental impact during late hours, the applicant (and any future operators of the existing eating and drinking establishment) will be required to obtain an Operator License issued by the Chief of Police pursuant to Chapter 5.25 of the Municipal Code. Additionally, the applicant will be required to take reasonable steps to discourage and correct objectionable conditions that constitute a nuisance, should they occur, to areas surrounding the restaurant and adjacent properties during business hours. If the operator is unable to abide by the conditions of approval, or prevent objectionable conditions from occurring, the Police Department will have the authority to modify, suspend, or revoke the operator's ability to maintain late-hour operations, or require other corrective measures. The Police Department provided alcohol related crime statistics that help to demonstrate that the project should not prove to be a detriment.

The off-site parking lot is located within 500 feet of the subject property. Employees who drive to work will be required to park in the off-site parking lot. Use of the lot will not create undo traffic hazards because most patrons will be able to utilize the valet service and the valet plan will be reviewed and approved by the City Traffic Engineer. The leased parking spaces will be clearly marked so that the valet service employees and restaurant patrons will know which spaces are available for the restaurant use at the subject property.

### Summary

The subject property and structure have historically been uses as a restaurant. The applicant proposes minor alterations to the property with the floor plan remaining generally unchanged. Conditional Use Permit approval is required for the restaurant operation and must address the restaurant use, late hours, alcohol sales, live entertainment, outdoor dining, delivery operation, and parking. The proposed project is



in conformance with the General Plan and other City policies and with the proposed conditions of approval, it is not anticipated to be detrimental to the community.

#### Alternatives

1. The Planning Commission may suggest specific operational changes that are necessary to alleviate any concerns. If the changes are substantial, the item should be continued to a future meeting.
2. If the Planning Commission believes that there are insufficient facts to support the findings for approval, the Planning Commission should deny the application.

#### Environmental Review

The project is categorically exempt under Section 15301, of the California Environmental Quality Act (CEQA) Guidelines - Class 1 (Existing Facilities), which exempts minor alterations to existing facilities. The existing building will remain with no additional square footage. The scope of the physical construction is limited to minor alterations. The building was previously used as an eating and drinking establishment and any changes in operational characteristics are negligible.

#### Public Notice

Notice of this hearing was published in the Daily Pilot, mailed to property owners within 300 feet of the property and posted at the site a minimum of 10 days in advance of this hearing consistent with the Municipal Code. Additionally, the item appeared upon the agenda for this meeting, which was posted at City Hall and on the city website.

Prepared by:

Submitted by:

  
Fern Nueno, Assistant Planner

  
Gregg B. Ramirez, Senior Planner

#### ATTACHMENTS

- PC 1 Draft Resolution with Findings and Conditions
- PC 2 Applicant's Project Description
- PC 3 Parking Management Plan
- PC 4 Parking Counts
- PC 5 Reporting District Map and Crime Statistics
- PC 6 Project plans

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# **Attachment No. PC 1**

Draft Resolution with Findings and  
Conditions

**RESOLUTION NO. #####**

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH APPROVING CONDITIONAL USE PERMIT NO. UP2011-001 FOR A FOOD SERVICE RESTAURANT WITH LATE HOURS, LIVE ENTERTAINMENT, ALCOHOL SALES, OUTDOOR DINING, AND DELIVERIES; AND A PARKING MANAGEMENT PLAN TO ADDRESS OFF-SITE PARKING, VALET, AND AN ADJUSTMENT TO THE OFF-STREET PARKING REQUIREMENTS FOR PROPERTY LOCATED AT 2601 WEST COAST HIGHWAY (PA2011-005)**

THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH HEREBY FINDS AS FOLLOWS:

**SECTION 1. STATEMENT OF FACTS.**

1. An application was filed by G.E.P. Enterprise Group, with respect to property located at 2601 West Coast Highway, and legally described as the northwesterly 50 feet of the southeasterly 1300 feet of Lot H of Tract 919 requesting approval of a Conditional Use Permit.
2. The applicant proposes a food service restaurant with late hours, live entertainment, alcohol sales, outdoor dining, and delivery. The applicant also proposes a parking management plan to address off-site parking, valet, and an adjustment to the off-street parking requirements.
3. The parking requirement is one (1) parking space for every 40 square feet of net public area. The net public area proposed is 1,719 square feet; therefore the parking requirement is 43 spaces. The applicant is providing 12 spaces on-site and 20 spaces off-site for a total of 32 parking spaces.
4. The subject property is located within the Mixed Use Water Related (MU-W1) Zoning District and the General Plan Land Use Element category is Mixed Use Water Related (MU-W1).
5. The subject property is located within the coastal zone. The Coastal Land Use Plan category is Mixed Use Water Related (MU-W).
6. A public hearing was held on June 9, 2011, in the City Hall Council Chambers, 3300 Newport Boulevard, Newport Beach, California. A notice of time, place and purpose of the meeting was given in accordance with the Newport Beach Municipal Code. Evidence, both written and oral, was presented to, and considered by, the Planning Commission at this meeting.

## SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. This project has been determined to be categorically exempt under the requirements of the California Environmental Quality Act under Class 1 (Existing Facilities).
2. Class 1 exempts minor alterations to existing facilities. The proposed project consists of interior alterations and minor changes in operational characteristics from previous restaurant operations at this site.

## SECTION 3. REQUIRED FINDINGS.

In accordance with Sections 20.52.020, 20.48.030, and 20.40.100 of the Newport Beach Municipal Code, the following findings and facts in support of such findings are set forth:

### Finding:

*A. The use is consistent with the General Plan and any applicable specific plan.*

### Facts in Support of Finding:

- A-1. The subject property is designated as Mixed-Use Water Related (MU-W1) by the Land Use Element of the General Plan, which is applied to waterfront locations along Mariners' Mile Corridor in which marine-related, visitor-serving, commercial, and residential uses are allowed. The proposed project is consistent with this designation as eating and drinking establishments are visitor-serving and commercial uses. The proposed project will also have space for approximately ten (10) boats, available for patrons who choose to take a boat to the restaurant. Furthermore, Land Use Policy LU 6.19.2 (Bay Fronting Properties) encourages marine-related and visitor-serving retail, restaurant, hotel, institutional, and recreational uses, with some allowance for residential uses.
- A-2. The subject property is not located in a specific plan area.

### Finding:

*B. The use is allowed within the applicable zoning district and complies with all other applicable provisions of this Zoning Code and the Municipal Code.*

### Facts in Support of Finding:

- B-1. The subject property is located within the Mixed Use Water Related (MU-W1) Zoning District, which applies to waterfront properties along the Mariners' Mile Corridor in which nonresidential uses and residential dwelling units may be intermixed. Eating and drinking establishments designated as "Food Service, Late Hours" are allowed with approval of a conditional use permit. Facilities open to the public past 11:00 p.m. any day of the week are considered establishments with late hours. The proposed project is consistent with this designation.



- B-2. As conditioned, the proposed project complies with Section 20.48.090 (Eating and Drinking Establishments) in regards to the operating standards.
- B-3. Section 20.40.060 (Parking Requirements for Food Service Uses) establishes criteria to determine the parking requirement for food uses from one (1) parking space for every 30-50 square feet of net public area. Based on the physical design characteristics, operational characteristics, and location of the establishment, a parking requirement of one (1) space for every 40 square feet of net public area is sufficient. The applicant is making the dock slips available for patron use, increasing the accessibility to the use. The outdoor dining is limited to less than 25 percent of the interior net public area. The amount of floor area devoted to live entertainment is relatively small, and no dancing is proposed. The applicant proposes to provide high end barbeque that will likely lead to a low turnover rate. There are other nearby uses that will lead to some walk-in trade. Off-site parking and valet are addressed in the Parking Management Plan.
- B-4. Pursuant to Section 20.40.110 (Adjustments to the Off-Street Parking Requirements), the Parking Management Plan will be implemented to mitigate impacts associated with a reduction in the number of required parking spaces. The Parking Management Plan and valet plan will result in a highly efficient use of the parking spaces available to the restaurant patrons. The parking survey conducted by staff demonstrated that the off-site lot on average contained 40 vehicles out of 122 available spaces (33 percent occupied). The parking survey conducted by staff also demonstrated that the 91 nearby public parking spaces were on average 53 percent occupied. The 2009 parking study by Walker Parking Consultants concluded that overall the Mariners' Mile area does not have a parking shortage. Therefore, the off-site parking agreement will not impact the use of the parking lot by the employees and patrons of 2700 West Coast Highway.

Finding:

- C. The design, location, size, and operating characteristics of the use are compatible with the allowed uses in the vicinity.*

Facts in Support of Finding:

- C-1. The proposed project is located within a nonresidential zoning district. The parking lot and primary openings to the restaurant are oriented towards West Coast Highway. The outdoor dining area faces the parking lot. The operational characteristics are that of a restaurant, and the establishment will not be used exclusively as a bar or nightclub, as defined by the Zoning Code.

Finding:

*D. The site is physically suitable in terms of design, location, shape, size, operating characteristics, and the provision of public and emergency vehicle (e.g., fire and medical) access and public services and utilities.*

Facts in Support of Finding:

D-1. The lot is approximately 50 feet wide by 240 feet deep (11,949 square feet in area including partially submerged land), and is developed with a 3,987-square-foot single-story commercial building, a surface parking lot with twelve (12) parking spaces, and a boat slip. The existing building and parking lot have functioned satisfactorily in the past with the current configuration. The proposed project includes interior alterations and an outdoor patio, which will not negatively affect emergency access. The lot is an interior lot and has multiple doors and windows for ingress and egress. The building is located six feet from the easterly property line, so there is sufficient room for emergency access.

Finding:

*E. Operation of the use at the location proposed would not be detrimental to the harmonious and orderly growth of the City, or endanger, jeopardize, or otherwise constitute a hazard to the public convenience, health, interest, safety, or general welfare of persons residing or working in the neighborhood of the proposed use.*

Facts in Support of Finding:

- E-1. The use is compatible with the neighborhood because the Mariners' Mile area is an established commercial area with several similar uses nearby. The existing site is located on a major road and has been utilized for restaurant uses since 1968.
- E-2. The project has been reviewed and conditioned to ensure that potential conflicts with surrounding land uses are minimized to the extent possible to maintain a healthy environment for residents and businesses.
- E-3. The closest residential district is 500 feet away and the closest residential district across Lido Channel is 800 feet away from the subject property.
- E-4. Adequate parking is maintained and will be provided by valet service in conformance with the Parking Management Plan.
- E-5. Potential noise impacts will be diminished because live entertainment is not proposed during late hours or on weekdays.
- E-6. The Police Department indicates it has no objections to the applicant's request. To ensure the proposed use does not create a detrimental impact during late hours, the applicant (and any future operators of the existing eating and drinking establishment)

will be required to obtain an Operator License issued by the Chief of Police pursuant to Chapter 5.25 of the Municipal Code.

- E-7. The proposed outdoor dining will be located outside of the front entrance facing the parking lot and will be open no later than midnight, daily.
- E-8. The property has been vacant for several years and re-establishing a restaurant use will help to revitalize the Mariners' Mile area.

Finding:

- F. The proposed use is consistent with the purpose and intent of Section 20.48.030 (Alcohol Sales).*

Facts in Support of Finding:

- F-1. The project has been reviewed and conditioned to ensure that the purpose and intent of Section 20.48.030 (Alcohol Sales) of the Zoning Code is maintained and that a healthy environment for residents and businesses is preserved. The service of alcoholic beverages is intended for the convenience of customers of the restaurant. Operational conditions of approval recommended by the Police Department relative to the sale of alcoholic beverages will ensure compatibility with the surrounding uses and minimize alcohol-related impacts.
- F-2. Pursuant to Chapter 5.25 of the Municipal Code, the project has been conditioned to require that the applicant, as well as any future operators of the eating and drinking establishment, obtain an Operator License to ensure the establishment is operated in a safe manner.
- F-3. The subject property is located within a mixed use district developed primarily with commercial uses. Across the Lido Channel, the closest residential district is approximately 800 feet away. To the north, the closest residential district is almost 500 feet away. The nearest park is located on Cliff Drive above West Coast Highway and is over 500 feet from the subject property. There are no day care centers, recreation facilities, places of religious assembly, or schools in close proximity to the subject property.

Finding:

- G. The parking facility is located within a convenient distance to the use it is intended to serve.*

Facts in Support of Finding:

- G-1. The off-site parking lot is less than 500 feet away from the subject property.

- G-2. Valet service will be available on-site allowing customers to drop off their cars at the restaurant site.

Finding:

*H. On-street parking is not being counted towards meeting parking requirements.*

Facts in Support of Finding:

- H-1. The required amount of parking is 43 spaces. The project provides 12 on-site spaces and 20 off-site spaces; therefore, a parking requirement adjustment of eleven (11) parking spaces is required.
- H-2. Ninety-one (91) public parking spaces (on street, municipal lot) are located within a short walking distance to the subject property; however, those spaces are not being counted towards meeting the parking requirement.

Finding:

*I. Use of the parking facility will not create undue traffic hazards or impacts in the surrounding area.*

Facts in Support of Finding:

- I-1. Employees and patrons parking in the off-site parking lot can walk down Tustin Avenue and cross at the cross walk, so there will not be any undue traffic hazards from pedestrians.
- I-2. Valet service will be available so customers can drop off their cars at the restaurant site. The valet plan will be reviewed and approved by the City Traffic Engineer.
- I-3. The Parking Management Plan will address the use of the off-site parking lot and valet operations.

Finding:

*J. The parking facility will be permanently available, marked, and maintained for the use it is intended to serve.*

Facts in Support of Finding:

- J-1. The applicant will secure a lease for 20 parking spaces within the lot located at 2615 Avon Street. If those parking spaces become unavailable in the future, the applicant will notify the Community Development Director who will establish a reasonable time for substitute parking to be provided or the net public area of the restaurant to be decreased.



- J-2. The off-site parking spaces will be clearly marked for use by employees and customers of 2601 West Coast Highway.

**SECTION 4. DECISION.**

**NOW, THEREFORE, BE IT RESOLVED:**

1. The Planning Commission of the City of Newport Beach hereby approves Conditional Use Permit No. UP2011-001, subject to the conditions set forth in Exhibit A, which is attached hereto and incorporated by reference.
2. This action shall become final and effective fourteen days after the adoption of this Resolution unless within such time an appeal is filed with the City Clerk in accordance with the provisions of Title 20 Planning and Zoning, of the Newport Beach Municipal Code.

**PASSED, APPROVED AND ADOPTED THIS 9<sup>th</sup> DAY OF JUNE, 2011.**

AYES:

NOES:

ABSTAIN:

ABSENT:

BY: \_\_\_\_\_  
Earl McDaniel, Chairman

BY: \_\_\_\_\_  
Michael Toerge, Secretary

**EXHIBIT "A"**

**CONDITIONS OF APPROVAL**

1. The development shall be in substantial conformance with the approved site plan, floor plans and building elevations stamped and dated with the date of this approval, except as modified by applicable conditions of approval.
2. The Conditional Use Permit shall be reviewed by the Planning Commission within one (1) year of the restaurant being in operation.
3. The hours of operation shall be limited to between 11:00 a.m. and 11:00 p.m., daily, unless the operator of the establishment secures and maintains an Operator License pursuant to Chapter 5.25 of the Municipal Code. In no case shall the establishment be permitted to operate beyond the hours of 2:00 a.m.
4. The outdoor dining patio shall be closed no later than midnight, daily.
5. The Operator License required to be obtained pursuant to Condition No. 3 and Chapter 5.25 of the Municipal Code may be subject to additional and/or more restrictive conditions to regulate and control potential late-hour nuisances associated with the operation of the establishment.
6. All windows shall remain closed at all times after 11:00 p.m., daily.
7. The outdoor dining area shall be limited to 25 percent of the interior net public area.
8. Live entertainment is limited to Saturdays and Sundays from 2:00 p.m. to 7:00 p.m.
9. There shall be no live entertainment allowed on the premises without first obtaining a live entertainment permit from the City.
10. Noise from the live entertainment shall be confined to the interior of the structure.
11. The applicant shall provide licensed security personnel (a minimum of one (1) per 50 patrons) while offering live entertainment. A comprehensive security plan for the permitted use shall be submitted for review and approval by the Police Department. Should security personnel not be deemed necessary by the Chief of Police, the requirement for security personnel may be reduced or waived.
12. There shall be no dancing allowed on the premises or Cafe Dance permit issued without an amendment to this Conditional Use Permit.
13. Conformance with the Parking Management Plan shall be required at all times.
14. A parking agreement, which guarantees the long term availability of the off-site parking facility for the use located at 2601 West Coast Highway, shall be recorded with the

County Recorder's Office. The agreement shall be in a form approved by the City Attorney and Community Development Director.

15. All parking in conjunction with this use shall be confined to the parking lots over which the applicant, owner, or operator has written rights to park. If, in the opinion of the Community Development Director or City Traffic Engineer, the proposed use creates parking congestion at the site, the applicant shall immediately resolve the congestion problem by increasing valet attendants or through other means until the parking congestion is eliminated and parking is properly managed. Adequate valet personnel shall be provided to eliminate queuing onto West Coast Highway. The Community Development Director or City Traffic Engineer has the discretion to require the preparation and implementation of a revised Parking Management Plan.
16. The parking lot layout including any future changes shall be subject to the review and approval of the City Traffic Engineer.
17. The valet plan shall be reviewed and approved by the City Traffic Engineer.
18. The applicant shall fully cooperate with the City, Caltrans, and adjacent property owner to the east with regards to any future construction of the fourth leg of the signalized West Coast Highway/Tustin Avenue intersection. The fourth leg of the intersection is a vital component to improve the valet operation by providing a signalized approach to the driveway. Should this signal improvement not be planned and/or constructed, the City Traffic Engineer shall require, and the applicant is responsible for the implementation of other corrective measures deemed necessary in order to ensure adequate and safe vehicular access and valet parking operations. The current configuration only permits right turn in and right turn out from the existing driveway.
19. All delivery trucks shall be required to service the restaurant from on-site and shall be prohibited from loading/unloading on West Coast Highway. Deliveries shall be scheduled outside of the peak operating hours of the restaurant so that access to the side will not be blocked.
20. Deliveries and refuse collection for the facility shall be prohibited between the hours of 10:00 p.m. and 8:00 a.m., daily, unless otherwise approved by the Community Development Director.
21. The property owner shall provide a 10-foot wide irrevocable pedestrian easement along the bay front on the inland side of the existing bulkhead.
22. Delivery vehicles for food delivery service offered as part of the restaurant operation shall not park in the public right-of-way when not in use. The food delivery service loading and unloading shall occur on-site. The food delivery service shall be prohibited from loading and unloading within the West Coast Highway right-of-way.
23. No recreational vehicles, boats, or similar vehicles shall be stored at any time at the subject site.

24. Prior to issuance of a building permit, approval from the County of Orange Health Department is required.
25. A grease interceptor shall be installed, subject to review by the Utilities Division and Building Division.
26. Disabled access shall be provided to dining areas or equivalent seating areas and disabled seating shall be provided at the bar.
27. Access compliance and sufficient number of bathroom fixtures shall be provided for the bathrooms.
28. Replacement of 4TT box and lid on the existing clean-out shall be required.
29. Backflow devices may be required, depending on the final design of the project, subject to review by the Utilities Division.
30. Replacement of the sewer lateral may be required, subject to review by the Utilities Division.
31. A kitchen fire suppression system may be required for the hood, subject to review by the Fire Department.
32. All owners, managers, and employees selling alcoholic beverages shall undergo and successfully complete a certified training program in responsible methods and skills for serving and selling alcoholic beverages.
33. Approval of this Conditional Use Permit does not permit Dry Dock to operate as a bar, tavern, cocktail lounge, or nightclub, as defined by the Municipal Code, unless a new or amended Conditional Use Permit is first approved by the Planning Commission.
34. Full menu service shall be available for ordering at all times that the restaurant establishment is open for business.
35. No alcoholic beverages shall be consumed on any property adjacent to the licensed premises under the control of the licensee.
36. Food from the full service menu must be made available during any "happy hour" type of reduced price alcoholic beverage promotion. There shall be no reduced price alcoholic beverage promotion after 9 p.m.
37. "VIP" passes or other passes to enter the establishment, as well as door charges, cover charges, or any other form of admission charge, including minimum drink order or sale of drinks, is prohibited.



38. The use of private (enclosed) "VIP" rooms or any other temporary or permanent enclosures separate from public areas is prohibited.
39. The operator shall not share any profits or pay any percentage or commission to a promoter or any other person based upon monies collected as a door charge, cover charge, or any other form of admission charge, including minimum drink orders or the sale of drinks.
40. The quarterly gross sales of alcoholic beverages shall not exceed the gross sales of food during the same period. The licensee shall at all times maintain records, which reflect separately the gross sales of food and the gross sales of alcoholic beverages of the licensed business. These records shall be kept no less frequently than on a quarterly basis and shall be made available to the Police Department on demand.
41. There shall be no on-site radio, television, video, film, or other electronic media broadcasts, including recordings to be broadcasted at a later time, which include the service of alcoholic beverages, without first obtaining an approved Special Event Permit issued by the City.
42. Strict adherence to the maximum occupancy limits is required.
43. No games or contests requiring or involving the consumption of alcoholic beverages shall be permitted.
44. All proposed signs shall be in conformance with the approved Comprehensive Sign Program for the project site and provisions of Chapter 20.42 of the Newport Beach Municipal Code.
45. There shall be no exterior advertising or signs of any type, including advertising directed to the exterior from within, promoting or indicating the availability of alcoholic beverage. Interior displays of alcoholic beverages or signs, which are clearly visible to the exterior, shall constitute a violation of this condition.
46. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
47. The applicant shall comply with all federal, state, and local laws. Material violation of any of those laws in connection with the use may be cause for revocation of this Use Permit.
48. This approval was based on the particulars of the individual case and does not in and of itself or in combination with other approvals in the vicinity or Citywide constitute a precedent for future approvals or decisions.
49. This Conditional Use Permit may be modified or revoked by the City Council or Planning Commission should they determine that the proposed uses or conditions under which it is being operated or maintained is detrimental to the public health,

welfare or materially injurious to property or improvements in the vicinity or if the property is operated or maintained so as to constitute a public nuisance.

50. Any change in operational characteristics, expansion in area, or other modification to the approved plans, shall require an amendment to this Conditional Use Permit or the processing of a new Conditional Use Permit.
51. Prior to the issuance of a building permit, the applicant shall pay any unpaid administrative costs associated with the processing of this application to the Planning Department.
52. All lighting shall conform with the standards of Section 20.30.070 (Outdoor Lighting).
53. All noise generated by the proposed use shall comply with the provisions of Chapter 10.26 and other applicable noise control requirements of the Newport Beach Municipal Code.
54. No outside paging system shall be utilized in conjunction with this establishment.
55. All trash shall be stored within the building or within dumpsters stored in the trash enclosure (three walls and a self-latching gate) or otherwise screened from view of neighboring properties, except when placed for pick-up by refuse collection agencies. The trash enclosure shall have a decorative solid roof for aesthetic and screening purposes.
56. Trash receptacles for patrons shall be conveniently located both inside and outside of the establishment, however, not located on or within any public property or right-of-way.
57. The exterior of the business shall be maintained free of litter and graffiti at all times. The owner or operator shall provide for daily removal of trash, litter debris and graffiti from the premises and on all abutting sidewalks within 20 feet of the premises.
58. The applicant shall ensure that the trash dumpsters and/or receptacles are maintained to control odors. This may include the provision of either fully self-contained dumpsters or periodic steam cleaning of the dumpsters, if deemed necessary by the Planning Department. Cleaning and maintenance of trash dumpsters shall be done in compliance with the provisions of Title 14, including all future amendments (including Water Quality related requirements).
59. Storage outside of the building in the front or at the rear of the property shall be prohibited, with the exception of the required trash container enclosure.
60. A Special Event Permit is required for any event or promotional activity outside the normal operational characteristics of the approved use, as conditioned, or that would attract large crowds, or involve the sale of alcoholic beverages, or include any form of

on-site media broadcast, or any other activities as specified in the Newport Beach Municipal Code to require such permits.

61. Should the property be sold or otherwise come under different ownership, any future owners or assignees shall be notified of the conditions of this approval by either the current business owner, property owner or the leasing agent.
62. Construction activities shall comply with Section 10.28.040 of the Newport Beach Municipal Code, which restricts hours of noise-generating construction activities that produce noise to between the hours of 7:00 a.m. and 6:30 p.m., Monday through Friday and 8:00 a.m. and 6:00 p.m. on Saturday. Noise-generating construction activities are not allowed on Sundays or Holidays.
63. Conditional Use Permit No. 2011-001 shall expire unless exercised within 24 months from the date of approval as specified in Section 20.54.060 of the Newport Beach Municipal Code, unless an extension is otherwise granted.
64. To the fullest extent permitted by law, applicant shall indemnify, defend and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of the Dry Dock Restaurant including, but not limited to, the Conditional Use Permit No. UP2011-001. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by applicant, City, and/or the parties initiating or bringing such proceeding. The applicant shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. The applicant shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition.

# **Attachment No. PC 2**

Applicant's Project Description



# Planning Commission: Dry Dock (working title)

**Objective:** To provide a high quality, upscale Bar-B-Que restaurant for the citizens of Newport Beach; and establish the first restaurant delivery service that will provide late night *Quality* dinners to all of Newport. Our objective is to have delivery starting at 5:00 p.m. and run continuously until 1:30 A.M., seven days a week.

The restaurant delivery service will specialize in three items only; Baby Back Ribs, Wood Fired Thin Crust Pizza, and Broasted Chicken. These three items have proven to “travel” very well, and upon receipt remain hot, fresh and as good as they were coming out of the kitchen a short while ago.

This will be the first “Upscale Delivery” restaurant in existence as far as I know; that will be completely designed and fabricated to accommodate large scale “ToGo / Delivery” services to the entire community. The kitchen will be entirely designed with state of the art equipment, such as numerous monitors and G.P.S. systems to track and schedule deliveries, multiple phone lines and large receptionist area to accommodate incoming calls, and staging areas to provide for the four custom built “oven” vans that will be used, to serve the 86,0000 citizens that that are anxiously awaiting a return to B-B-Que.

The restaurant itself will serve these three items in addition to the normal “comfort” food usually found in a Bar-B-Que establishment. Hamburgers, Hot Dogs, Brisket, Steaks and some Seafood will be available on site; with all of the usual side dishes.

**Intention:** It is our sincere intention to bring back the small town, village atmosphere that Mariners Mile has always had to some extent, and try to replicate the feeling of a "real" local restaurant that has been there for forty some years. We have contracted with the design team of *Hatch Design Group*, who will be coordinating all of the exterior colors and redesigning the interior to replicate the restaurants that were around 50 to 60 years ago selling great Bar-B-Que.

I have lived in Newport Beach for 58 years and remember well the Tony Roma's that was located across the street from our location. The place was a huge success for many years and virtually was the only place in town to get Bar-B-Que. Since their closure, Newport has virtually not had any place to go for good Smoke House Bar-B-Que. My good friend Craig Hoffman has done a spectacular job opening up a dozen *Lucille's Smoke House Bar-B-Que's* all over Southern California. They have become so popular that he has changed many of his *Hof's Hut's* into *Lucille's*; taking the average 3 million dollar location, and turning them into 8 million dollar locations.

It is my opinion Mariner's Mile is in a state of severe decline, and it is at the point now that it will either recover and become a vibrant village type atmosphere catering to the citizens of Newport and the tourist industry; or it will continue its current path of decay and become virtually user unfriendly.

**Observation:** I am fully aware of the fact, that when we go to dine in Laguna Beach, we will be walking a short distance to the restaurant that we will be eating at. All three of my favorite and extremely successful restaurants do not have one parking place allocated to them anywhere within several blocks of the establishments, and it doesn't bother me in the least or deter customers. They have access to a large City Parking structure (per code) that I have never used in over

fifty visits. In fact it always makes it a more enjoyable experience to take a short walk through the "Village Atmosphere" before and after dining.

**Goal:** Our goal is to help re-make this particular section of Newport Beach, an area that has historical significance, a fun and exciting place for everyone. The current trend of desperately trying to upgrade the area leading into Mariner's Mile seems to be happening. Several of the buildings are in the middle of refurbishment, Billy's and A'Maree's remodel are now completed and ready for new customers; and Dolce appears to be coming along. We would like to spend a large amount of money refurbishing the existing *Josh Slocum's*, and turn it into a much desired, and long awaited, very "Newport" Bar-B-Que establishment.

**In Closing:** For many, many years The (old) Dry Dock restaurant, and following that Josh Slocum's, provided a fantastic, rustic atmosphere that served good food to tens of thousands of people over the years. The parking lot has not changed in size. The available off-site parking has not changed in size. The building has not changed in size. The rules and regulations have, and that is ok, and should be used as a "guideline" to help make decisions on new projects that are going to be built from scratch, and existing buildings that are requesting to be expanded. I am respectfully requesting that the parking requirements be modified in this particular location, and to be given a variance to continue operations as they have been for the last forty years. With the additional 20 spaces that will be leased at an expense of \$ 36,000.00 PER YEAR, it is our professional opinion we will be able to be a success, and turn a profit after recuperating the millions of dollars that will be invested, in the "long term".

Thank You.

A handwritten signature in black ink, featuring a large, stylized 'J' and 'S' that are interconnected, followed by a horizontal line and a small flourish at the end.

## **The Dry Dock Restaurant**

### **Parking Management Plan**

Prepared by: Choate Parking Consultants

Date: December, 2010

Revised: March 02, 2011

Revised: April 22, 2011

RECEIVED BY  
PLANNING DEPARTMENT  
APR 25 2011  
CITY OF NEWPORT BEACH



## **The Dry Dock Restaurant**

2601 West Coast Highway, Newport Beach, California 92658

### **Parking Management Plan**

#### **Project Description:**

Mr. Jeff Reuter, the applicant, is proposing to develop and operate a restaurant to be known as The Dry Dock Restaurant to be located in the current vacant restaurant building located at 2601 West Coast Highway. Implementation of the proposed eating and drinking establishment and to modify the off-street parking requirements, a parking management plan is required. The Dry Dock Restaurant is located within the area known as the Mariner's Mile. This area is rich with local restaurants and a neighborhood atmosphere. It is an area of the City that may develop into an area that invites patrons to enjoy a period of visiting more than one location on their visit and encourages the concept of park once and walk to one or multiple locations during each patron visit. The Dry Dock Restaurant is intended to provide that local neighborhood feel, catering to the citizens of Newport Beach and to out of town visitors and tourists. The proposed restaurant menu will provide a menu that is missing from Newport Beach eateries and will be the first in the City to provide upscale delivery service.

Mr. Reuter's goal is with the opening of The Dry Dock Restaurant to help begin the process of revitalizing the particular section of Mariner's mile on West Coast Highway, an area that has historical significance and a fun and exciting place for everyone. Several other restaurants in the area have begun refurbishment and The Dry Dock Restaurant will add to the rekindling of this area becoming a destination location in Newport Beach.

This parking management plan provides a description of existing conditions, and proposed parking management plans for the parking needed for the restaurant. It provides an analysis of available parking both in the daytime and the evening hours and details how parking will be provided and managed.

#### **Parking Requirements:**

The Dry Dock Restaurant is proposed to provide lunch and dinner services, seven days a week. Its operating hours will be from 11 am to 2 am on weekdays and weekends. The restaurant layout consists of approximately 1,719 square feet of net public area, requiring 1 parking space per 40 square feet of net public area or 43 parking spaces.

#### **Parking Space Availability:**

Due the narrow site constraints, parking spaces required for the restaurant will include 12 on-site spaces and 20 off-site spaces which will be leased and available for use as self-park spaces during the daytime

and valet parked spaces during the evening hours and on weekends. The balance of the eleven (11) required parking spaces will be provided from the existing one hundred and ninety-three (193) public parking spaces available in metered parking and an off-site public parking lots. As shown on exhibit #1, all of the parking is located within a 600' radius from the restaurant location. Other restaurants on wider lots are able to provide tandem parking along with the valet service. This gives them the flexibility to provide most, if not all, of their required parking on site. Unfortunately, the Dry Dock Restaurant lot is too narrow and is unable to take advantage of a tandem parking layout and accommodate a higher number of On-site parking.

Parking space occupancy counts were collected at adjoining restaurants throughout week of November 22 through December 4, 2010.

Weekday parking space counts and occupancy is provided in the chart below.

| Rest. Name            | Pkg. Space No. | No.of Veh.<br>11 a | No.of Veh.<br>12 p | No.of Veh.<br>1 p | No.of Veh.<br>2 p | No.of Veh.<br>3 p | No.of Veh.<br>4 p | No.of Veh.<br>5 p | No.of Veh.<br>6 p | No.of Veh.<br>7 p | No.of Veh.<br>8 p |
|-----------------------|----------------|--------------------|--------------------|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|
| Billy's / Chart House | 67             | 1                  | 6                  | 8                 | 6                 | 4                 | 8                 | 16                | 26                | 28                | 41                |
| 3 Thirty 3            | 54             | 16                 | 11                 | 14                | 10                | 4                 | 12                | 8                 | 10                | 21                | 28                |
| Rusty Pelican         | 67             | 4                  | 6                  | 8                 | 6                 | 7                 | 5                 | 9                 | 9                 | 14                | 16                |
| Ave. Occupancy        | 188 Spaces     | 11%                | 12%                | 16%               | 12%               | 8%                | 13%               | 18%               | 24%               | 34%               | 45%               |

Twenty off-site parking spaces will provided through off-site parking spaces leased for this purpose. Valet attendants are proposed to pick-up and drop-off vehicles from a designated curb side location located off-street within the parking lot. Valet service is only projected to be necessary during the evening hours of operation. The combination of the 12 On-Site parking spaces and 20 Off-Site Leased parking spaces are projected to provide adequate parking during the daytime lunch and afternoon service. See exhibit #1.

Off-site spaces are proposed to be signed and designated within the lot for use by The Dry Dock Restaurant patrons and employees.

**Parking Management Plan:**

Twelve parking spaces are provided for the restaurant on-site (see exhibit #1). These spaces include one accessible parking space (ADA). Delivery service will take place during the hours prior to the opening of the restaurant and existing on-site spaces would be available for loading purposes.

The on-site spaces are proposed to be managed as self-parked spaces from 11 am until 6 pm, seven days per week. During the evening hours, these spaces will be valet parked. After 6pm all metered parking is free and readily available for patrons to use if the Dry Dock restaurant's allocated 32 (On-site and leased Off-site) parking spaces will not suffice. There are approximately 193 metered/unmetered parking spaces within the vicinity. All together there would be 225 parking spaces available for patrons to utilize within a 600 foot or a five to seven (5-7) minute walk to the restaurant.

**Off-Site Parking:**

Off-site spaces located approximately one block or about 300 feet from the restaurant site. These spaces will be available to the Dry Dock Restaurant anytime during operating hours. These spaces would be available for patrons to self-park and walk to the restaurant during daytime operating hours and will be valet parking during the evening hours.

Valet parking, if needed or desired for restaurant patrons will be provided to patrons on site. The parking lot located at the northwest corner of Avon Street and Tustin Street will be the location for valet parked cars.

**Off-site Parking Space Leases:**

20 off-site parking spaces will be leased from Mr. Ned McCune. These spaces are located in the lot located at the northwest corner of Tustin Avenue and Avon Street.

**Valet Operations:**

A commercial parking operator will be hired to provide parking valet services for the restaurant during evening hours after 6 pm. Valet attendants will pick-up and drop-off vehicles at the kiosk located within the parking lot, as shown on the parking plan. Valet attendants will provide valet kiosks, key lock box, umbrellas, signage, tickets, and, etc. for the valet service. Valet attendants will drive vehicles to off-site parking areas and will retrieve and return vehicles to the same location for customers. Valet services are proposed to be provided seven days a week from 6 p.m. to closing time.

## **Parking Comparisons**

It is recognized from the survey conducted that the peak hours of the local restaurants are during the diner hours or after 6pm. During the day, no more than 50% of their On-site allocated parking is utilized. This doesn't include the off-site parking that every restaurant is mandated to lease in order to comply with the local parking requirement. During the day patrons do not have issues finding on-site parking at the local restaurants. During peak hours, after 6pm, On-site parking lots are typically valet only, which entices patrons to seek, metered parking first since it is free after 6pm. 193 public parking spaces will be readily available for patrons to use if the Dry Dock restaurant's allocated 32 (On-site and leased Off-site) parking spaces will not suffice.

It is not the intention of any business owner to lose their clientele for the lack of parking at the establishment. If anything, business owners wish they could provide more than enough On-site parking if site constraints permitted. Even though per code the Dry Dock restaurant is required to allocate 43 parking spaces, the business owner feels that it is beyond what his business will currently need and has agreed to provide 12 On-site and lease another 20 Off-site parking spaces for a total of 32. After all part of his business objective is to provide and be recognized for upscale delivering service of quality dinners. It is a goal that the majority of the cliental will be calling in their orders for delivery. Unlike other restaurants who base their success off site dinning. Needless to say, if the owner felt the business was suffering by the lack of parking that is providing, it would be the motive to acquire additional parking to meet his needs.



# Dry Dock (working title)

## Valet Management Plan:

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It is the intension of the restaurant to have a comprehensive Valet plan that will accommodate all of the needs of the patrons of the restaurant and meet the City of Newport Beach requirements. This plan may change as it becomes more obvious as to when the busiest times are for the restaurant; but our intention is to have numerous Valet parkers on site at all times, or if the on-site parking lot becomes half full at any given time period.

The Valet stand has been located in the middle of the parking lot so as to accommodate the cars entering without ANY back up on to the Coast Highway. The attendants will be able to usher in the last car and immediately block the entrance with a large movable sign stating that the lot is full so as to NOT impede the traffic.

We do not want ANY unhappy customers, and will do whatever is necessary to make sure their parking experience is as painless as possible. It is therefore our intention to be able to control the situation so as when the last car is brought in for valet parking on site; and the lot is full across the street, we can expeditiously implement the sign and the traffic should then remain clear to proceed to one of the hundreds of metered and unmetered parking spaces available within a very short distance.

The Valets will use the crosswalks at ALL times while utilizing the Valet parking location that we control across the street; and will exit only to the right upon leaving the restaurant lot, proceed down to the signal and make a legal U turn and proceed to the Valet lot across from the restaurant.

All patrons that Valet will be told in ADVANCE that their cars will take approximately ten minutes to retrieve if their car has to be parked at our satellite location; like most of the restaurants in the larger cities such as Los Angeles, or smaller cities with historic locations, people understand and are fine with the wait as long as they are told in advance. Yet, it is my sincere feeling, and given the "Mariner's Mile atmosphere" (that hopefully will be like Laguna Beach in the near future) people will park anywhere in the vicinity, as they did for the last forty years, and enjoy the short, healthy walk.

Thank You.

Jeff Reuter

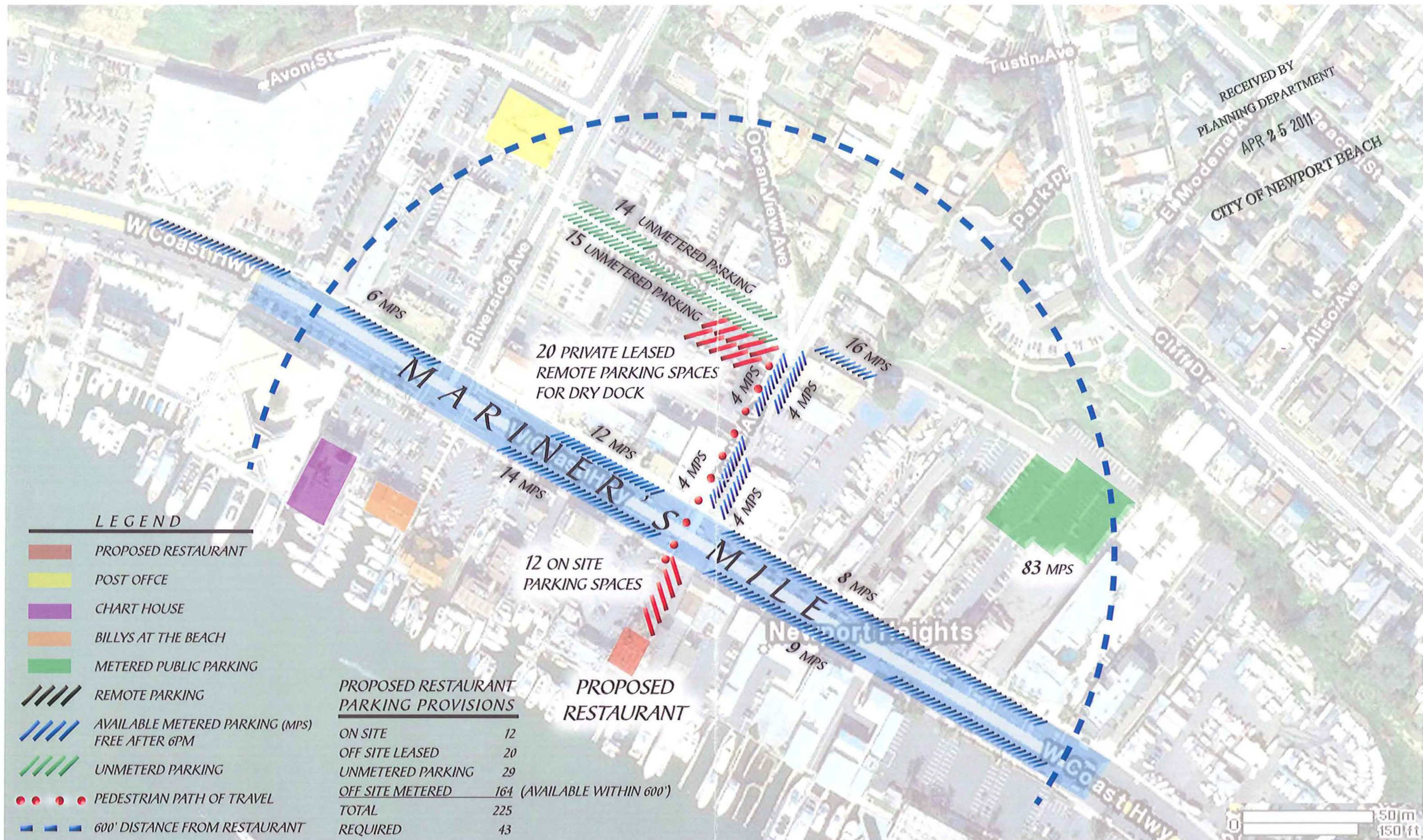
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APR 25 2011

CITY OF NEWPORT BEACH



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APR 25 2011  
CITY OF NEWPORT BEACH



RESTAURANT ON SITE, 20 OFF SITE LEASED AND AVAILABLE METERED STREET PARKING

MARINERS VILLAGE- REMOTE PARKING

2601 PACIFIC COAST HIGHWAY NEWPORT BEACH, CA 92663

4.22.2011

CPC

1



# **Attachment No. PC 3**

Parking Management Plan

**Parking Management Plan (PA2011-005)**  
**2601 West Coast Highway**  
**Dry Dock Restaurant**  
**June 9, 2011**

The following Parking Management Plan is provided pursuant to Section 20.40.110 (Adjustments to Off-Street Parking Requirements) of the Zoning Code. The Parking Management Plan will employ the following management mechanisms to mitigate impacts associated with reducing the off-street parking requirement by eleven (11) parking spaces as required by Chapter 20.40 of the Zoning Code:

**Off-Site Parking**

- Twenty (20) off-site parking spaces shall be available at 2615 Avon Street for use by the applicant's employees and patrons.
- The off-site parking spaces shall be clearly marked for use by employees and patrons of 2601 West Coast Highway.
- Employees who drive to work shall park at the off-site parking lot at 2615 Avon Street.
- The applicant shall immediately notify the Community Development Director of any change of ownership or use of the property at 2615 Avon Street, or of any change in the agreement between the parties.
- Upon notification that the off-site parking spaces are no longer available, the Community Development Director shall establish a reasonable time in which one of the following shall occur:
  - Substitute parking is provided that is acceptable to the Community Development Director; or
  - The size or capacity of the use subject to this Conditional Use Permit is reduced in proportion to the parking spaces lost.

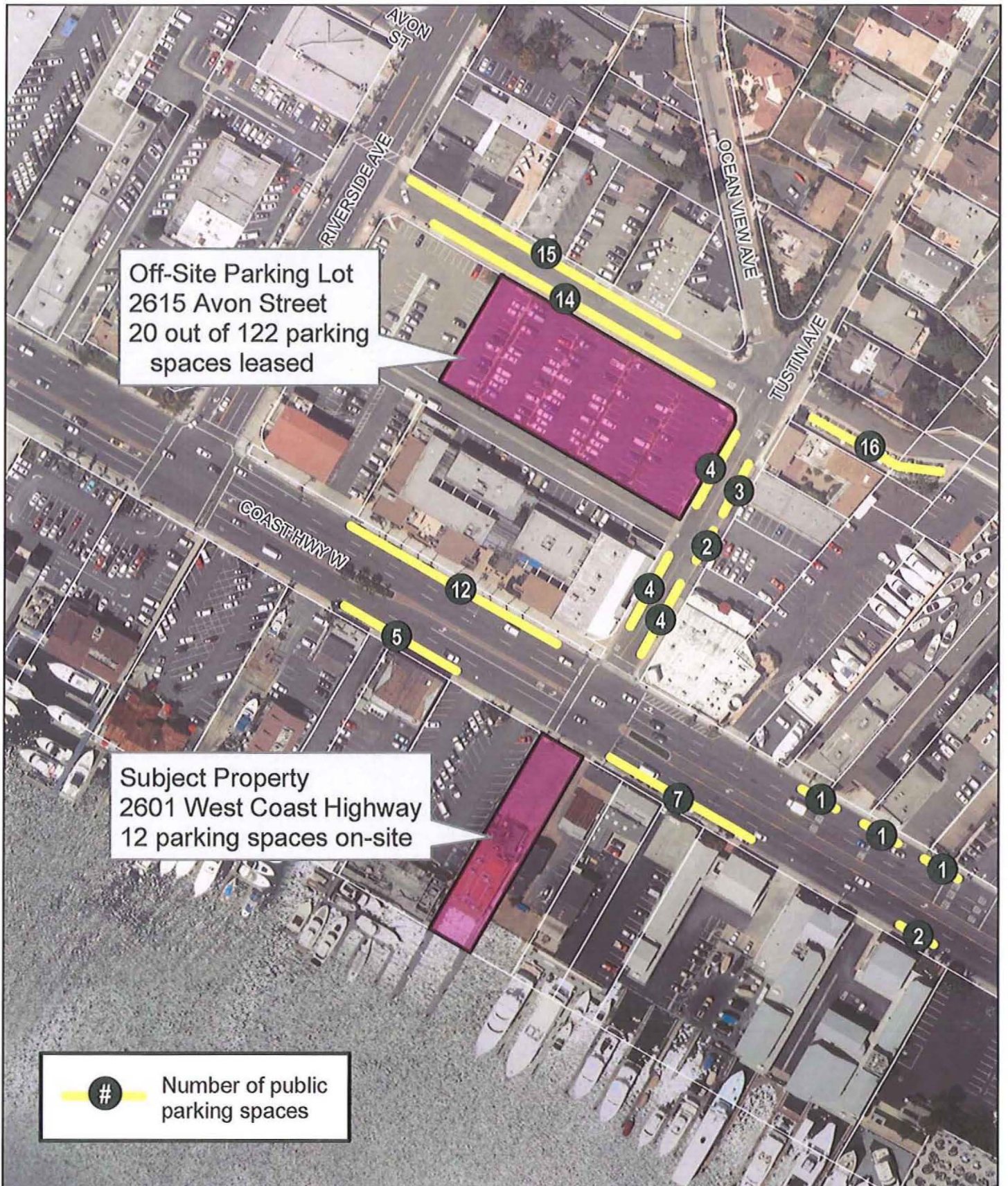
**Valet Operations**

- Valet drop off and pick up shall occur on-site. Valet pick up and drop off is prohibited in the public right-of-way.
- Valet attendants shall use the crosswalk when crossing West Coast Highway and shall obey all traffic laws while transporting vehicles to and from the off-site parking area.
- The approved valet/parking plan shall be implemented by the applicant or future operator of the restaurant at all times. Adequate valet personnel shall be provided to eliminate queuing onto West Coast Highway.
- If the valet operations are insufficient to meet the needs of the proposed use, then the valet operations and Parking Management Plan will need to be modified and reviewed by the City Traffic Engineer and Community Development Director.

# **Attachment No. PC 4**

Parking Counts





PA2011-005  
UP2011-001 - Dry Dock  
2601 West Coast Highway





### Parking Survey - 2615 Avon Street

The table reflects the number of cars parked in the parking lot out of 122 available

|              | Monday     | Tuesday    | Wednesday  | Thursday   | Friday     | Saturday   | Sunday     |
|--------------|------------|------------|------------|------------|------------|------------|------------|
| Time         | 04/25/2011 | 04/26/2011 | 04/27/2011 | 04/28/2011 | 04/29/2011 | 04/30/2011 | 05/01/2011 |
| 10:00 AM     | 43         |            |            |            |            |            |            |
| 11:00 AM     |            |            |            |            | 59         |            |            |
| 12:00 PM     | 42         |            |            | 67         |            |            |            |
| 1:00 PM      |            |            | 58         |            |            |            |            |
| 2:00 PM      |            |            |            |            |            |            |            |
| 3:00 PM      |            |            |            |            |            |            |            |
| 4:00 PM      | 43         |            | 46         |            |            |            |            |
| 5:00 PM      |            |            |            |            |            |            |            |
| 6:00 PM      |            |            |            | 21         |            |            |            |
| 7:00 PM      |            |            |            |            |            |            |            |
| 8:00 PM      |            |            |            |            |            |            |            |
| 9:00 PM      |            |            |            |            |            |            |            |
| 10:00 PM     |            |            |            |            |            |            |            |
| 11:00 PM     |            |            |            |            |            |            |            |
| 12:00 AM     |            |            |            |            |            |            |            |
| 1:00 AM      |            |            |            |            |            |            |            |
| Average Cars | 43         |            | 52         | 44         | 59         |            |            |
| Percent Full | 35%        |            | 43%        | 36%        | 48%        |            |            |
|              | Tuesday    | Wednesday  | Thursday   | Friday     | Saturday   | Sunday     | Monday     |
| Time         | 05/03/2011 | 05/04/2011 | 05/05/2011 | 05/06/2011 | 05/07/2011 | 05/08/2011 | 05/09/2011 |
| 10:00 AM     |            |            |            | 50         |            |            | 36         |
| 11:00 AM     |            |            |            |            |            |            |            |
| 12:00 PM     |            |            |            | 60         | 42         |            |            |
| 1:00 PM      |            |            | 55         |            |            | 24         |            |
| 2:00 PM      |            |            |            |            |            |            |            |
| 3:00 PM      |            |            |            |            |            |            |            |
| 4:00 PM      |            |            |            |            |            |            |            |
| 5:00 PM      |            |            |            |            | 15         |            |            |
| 6:00 PM      |            |            |            |            |            |            |            |
| 7:00 PM      |            |            |            |            |            |            |            |
| 8:00 PM      |            |            |            | 14         |            |            |            |
| 9:00 PM      |            |            |            |            |            |            |            |
| 10:00 PM     |            |            |            |            | 11         |            |            |
| 11:00 PM     |            |            |            |            |            |            |            |
| 12:00 AM     |            |            |            |            |            |            |            |
| 1:00 AM      |            |            |            |            |            |            |            |
| Average Cars |            |            | 55         | 41         | 23         | 24         | 36         |
| Percent Full |            |            | 45%        | 34%        | 19%        | 20%        | 30%        |

|              |     |
|--------------|-----|
| Average Cars | 40  |
| Percent Full | 33% |

### Parking Survey - Public Parking in the Vicinity

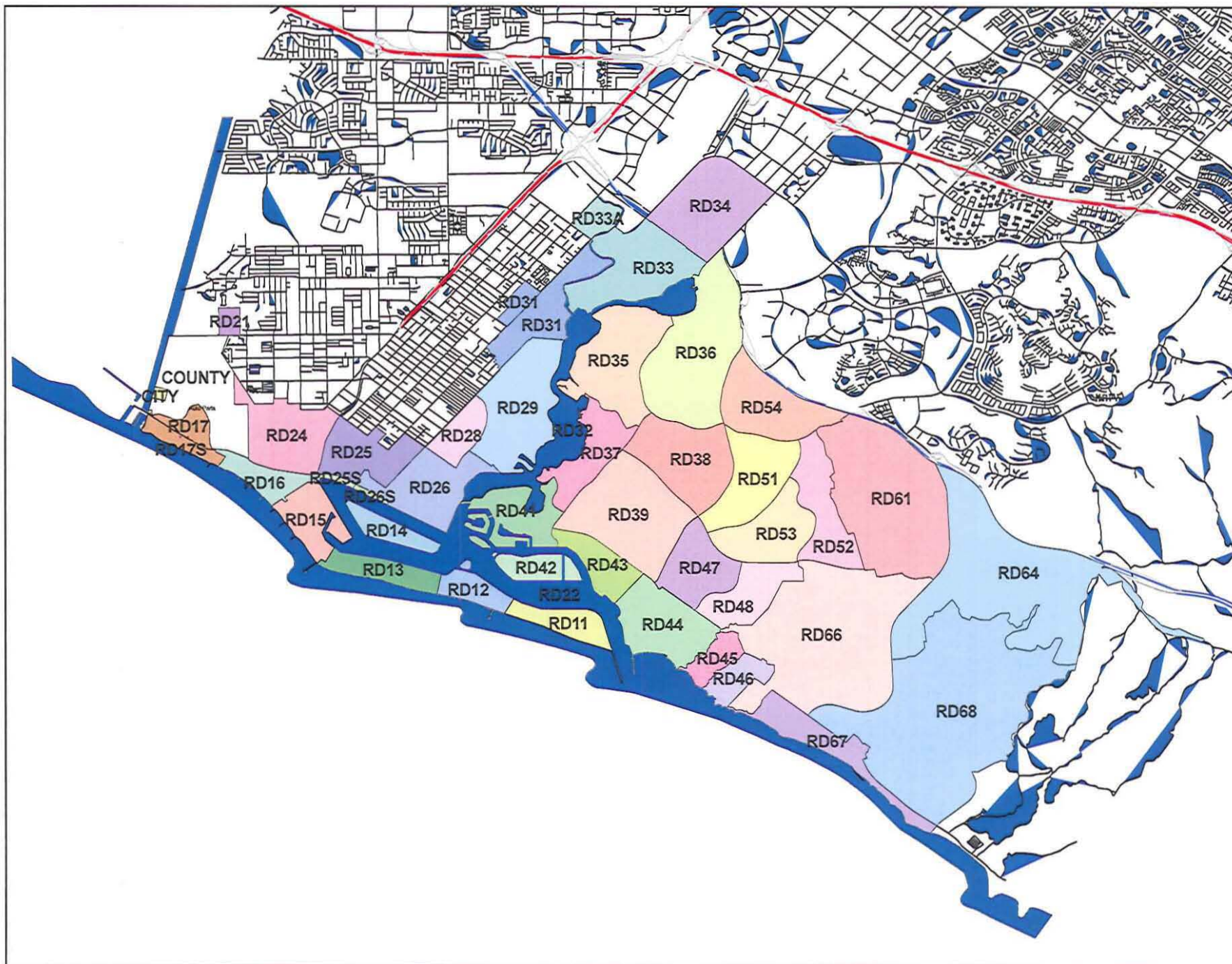
The table reflects the number of cars parked in public parking spaces out of 91 available

|              | Monday     | Tuesday    | Wednesday  | Thursday   | Friday     | Saturday   | Sunday     |
|--------------|------------|------------|------------|------------|------------|------------|------------|
| Time         | 05/16/2011 | 05/17/2011 | 05/18/2011 | 05/19/2011 | 05/20/2011 | 05/21/2011 | 05/22/2011 |
| 10:00 AM     |            |            |            |            |            |            |            |
| 11:00 AM     |            |            |            |            |            |            |            |
| 12:00 PM     |            |            |            |            |            |            |            |
| 1:00 PM      |            | 55         | 49         |            |            |            | 61         |
| 2:00 PM      |            |            |            |            |            | 37         |            |
| 3:00 PM      |            |            |            |            |            |            |            |
| 4:00 PM      |            |            |            | 45         |            |            |            |
| 5:00 PM      |            |            |            |            |            |            |            |
| 6:00 PM      |            |            |            |            |            |            |            |
| 7:00 PM      |            |            |            |            |            |            |            |
| 8:00 PM      | 20         |            |            |            |            | 73         |            |
| 9:00 PM      |            |            |            |            |            |            |            |
| 10:00 PM     |            |            |            |            |            |            |            |
| 11:00 PM     |            |            |            |            |            |            |            |
| 12:00 AM     |            |            |            |            |            |            |            |
| 1:00 AM      |            |            |            |            |            |            |            |
| Average Cars | 20         | 55         | 49         | 45         |            | 55         | 61         |
| Percent Full | 22%        | 60%        | 54%        | 49%        |            | 60%        | 67%        |

|              |     |
|--------------|-----|
| Average Cars | 49  |
| Percent Full | 53% |

# **Attachment No. PC 5**

Reporting District Map and Crime  
Statistics





# City of Newport Beach

## Police Department

### Memorandum

February 22, 2011

**TO:** Fern Nueno, Assistant Planner

**FROM:** Paul Salenko, Crime Analyst

**SUBJECT:** Alcohol Related Statistics

At your request, our office has reviewed police services data for the **Dry Dock Restaurant at 2601 West Coast Hwy.** This area encompasses our reporting district (RD) number 25 as well as part of Census Tract 634. This report reflects **City of Newport Beach** crime data for calendar year 2009, which is the most current data available.

#### Calls for Service Information

City wide there were approximately 69,294 calls for police services during this time, of which 3,049 were in **RD25**. A "call for service" is, *any contact of the police department by a citizen which results in the dispatching of a unit or causes the contacted employee to take some sort of action*, such as criminal investigations, alarm responses, traffic accidents, parking problems, and animal control calls, etc.

#### Crime Information

There were 6,194 crimes reported to the Newport Beach Police Department during this period. Of this total, 2,884 were Part One Crimes. Part One crimes are the eight most serious crimes (*Homicide, forcible Rape, Robbery, Aggravated Assault, Burglary, Larceny-theft, Auto Theft and Arson*) as defined by the FBI in the Uniform Crime Reports. The remaining 3,350 were Part Two crimes. The Part One crime rate for the entire city during this same period was 3,297.31 per 100,000 people. The national Part One crime rate was 3,465.52\* per 100,000 people.

| Crimes            | RD 25    | Newport Beach | California* | National*     |
|-------------------|----------|---------------|-------------|---------------|
| Part 1            | 113      | 2,884         | 1,184,073   | 10,639,369927 |
| Part 2            | 88       | 3,350         | N/A         | N/A           |
| Part 1 Crime Rate | 3,868.87 | 3,297.31      | 3,203.52    | 3,465.52      |

The number of active ABC licenses in this RD is 21\*\*

Per capita ratio 1 license for every 139 residents.

This reporting district had a total of 248 reported crimes as compared to a City wide reporting district average of 162 reported crimes. This reporting district is 86 crimes more or 53.09% above the City wide reporting district average. This location is within an RD that is over the Orange County per capita average of ABC licenses\*\*.

### Arrest Information

There were 27 DUI arrests and 20 Plain Drunk arrest in this area during this same period as compared to 1,270 for the entire city. This RD amounts to 3.7% of the DUI/Drunk arrests made in the entire City. According to a recent national study by the Department of Justice, more than 36% of adult offenders convicted of crimes in 1996 had been drinking at the time of their arrest.

| Arrests<br>(DUI/Drunk) | RD 25 | Newport Beach | California* | National*  |
|------------------------|-------|---------------|-------------|------------|
|                        | 47    | 1,270         | 336,008     | 2,094,465  |
| Total Arrests          | 113   | 3,595         | 1,547,811   | 14,005,615 |

### Additional Information

The Alcoholic Beverage Outlets ordinance states that the Planning Commission shall consider the crime rate in the adjacent reporting districts. The two adjacent reporting districts you requested are RD 24 and RD 16

| Crimes                              | RD 24          | RD 16           |
|-------------------------------------|----------------|-----------------|
| Part 1                              | 155            | 167             |
| Part 2                              | 120            | 107             |
| Crime Rate                          | 3,096.60       | 6,003.49        |
| Arrests (DUI/Drunk)                 | 79             | 110             |
| Total Arrests                       | 220            | 323             |
| Calls For Service                   | 3,898          | 3,261           |
| Number of active ABC licenses       | 9**            | 6**             |
| Per capita ratio1 license for every | 556* residents | 464* residents. |

**Note:** It is important to remember that when dealing with small numbers any change greatly affects any percentage changes.

The population figure used for the Crime Rate was 86,252.

\*These numbers are from the 2009 Uniform Crime Reports, which is the most recent edition.

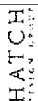
\*\*The number of active ABC licenses is the total of all types of licenses known to the police department as of the date of this document. As of June 30, 2009 the Orange County average of active, retail ABC licenses was 1 license for every 542 residents. (5,589 licenses and a population of 3,026,786)

If you are in need of any further assistance, please contact me at (949) 644-3791.

Paul Salenko  
Crime Analysis Unit

# **Attachment No. PC 6**

Project plans


$$\begin{aligned} \mathcal{L}(\mathbf{y}|\mathbf{X}) &= \prod_{i=1}^n \frac{1}{\sigma_i} \exp\left(-\frac{1}{\sigma_i} y_i\right) \\ &= \prod_{i=1}^n \frac{1}{\sigma_i} \exp\left(-\frac{1}{\sigma_i} \left(\frac{1}{\sigma_i} \exp\left(-\frac{1}{\sigma_i} y_i\right)\right)\right) \\ &= \prod_{i=1}^n \frac{1}{\sigma_i} \exp\left(-\frac{1}{\sigma_i} \exp\left(-\frac{1}{\sigma_i} y_i\right)\right) \end{aligned}$$

**"WORKING TITLE"**  
**THE DRY DOCK**  
2601 WEST COAST HIGHWAY  
NEWPORT BEACH, CA 92663-4708

[illegible]

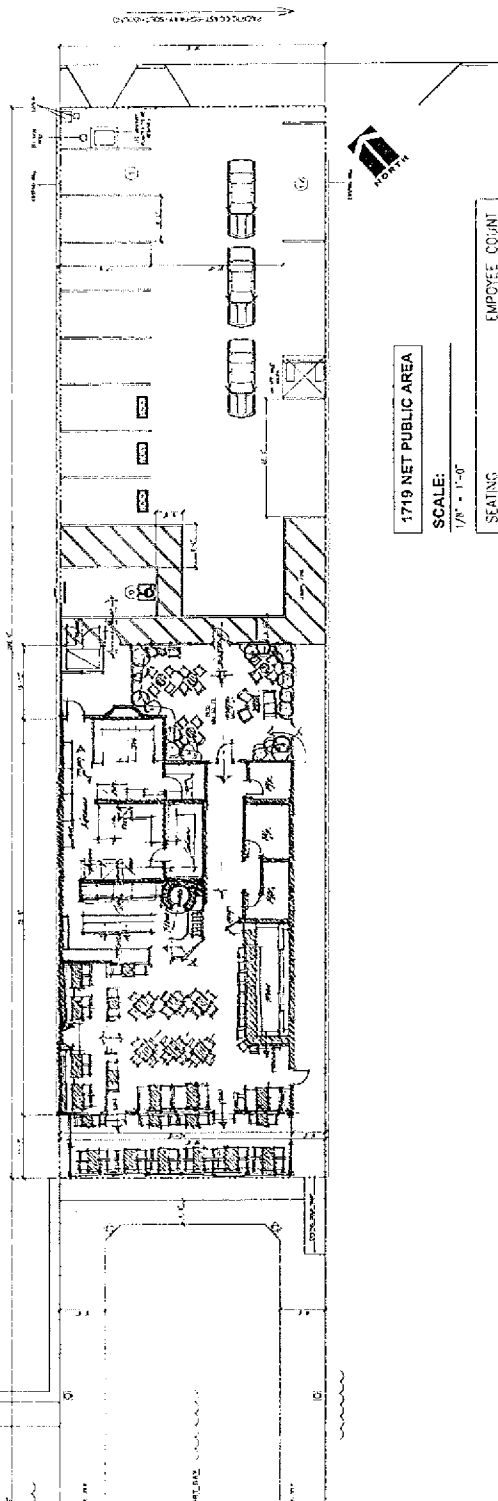
REVISIONS

DATE

FILED ON

### SITE PLAN

51



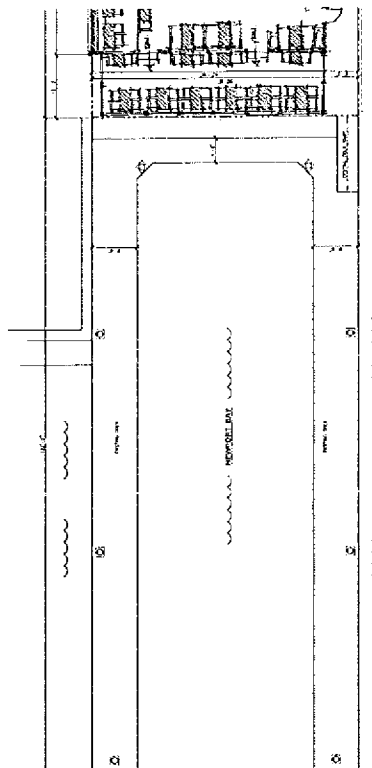
1719 NET PUBLIC AREA

SCALE:

$$\overline{N^+} = 1^+ - 0^-$$

EMPLOYEE COUNT 6.00

**SEATING**  
ENTRY PATIO - 22 SEATS  
DINING - 90 SEATS  
BAR - 10 SEATS



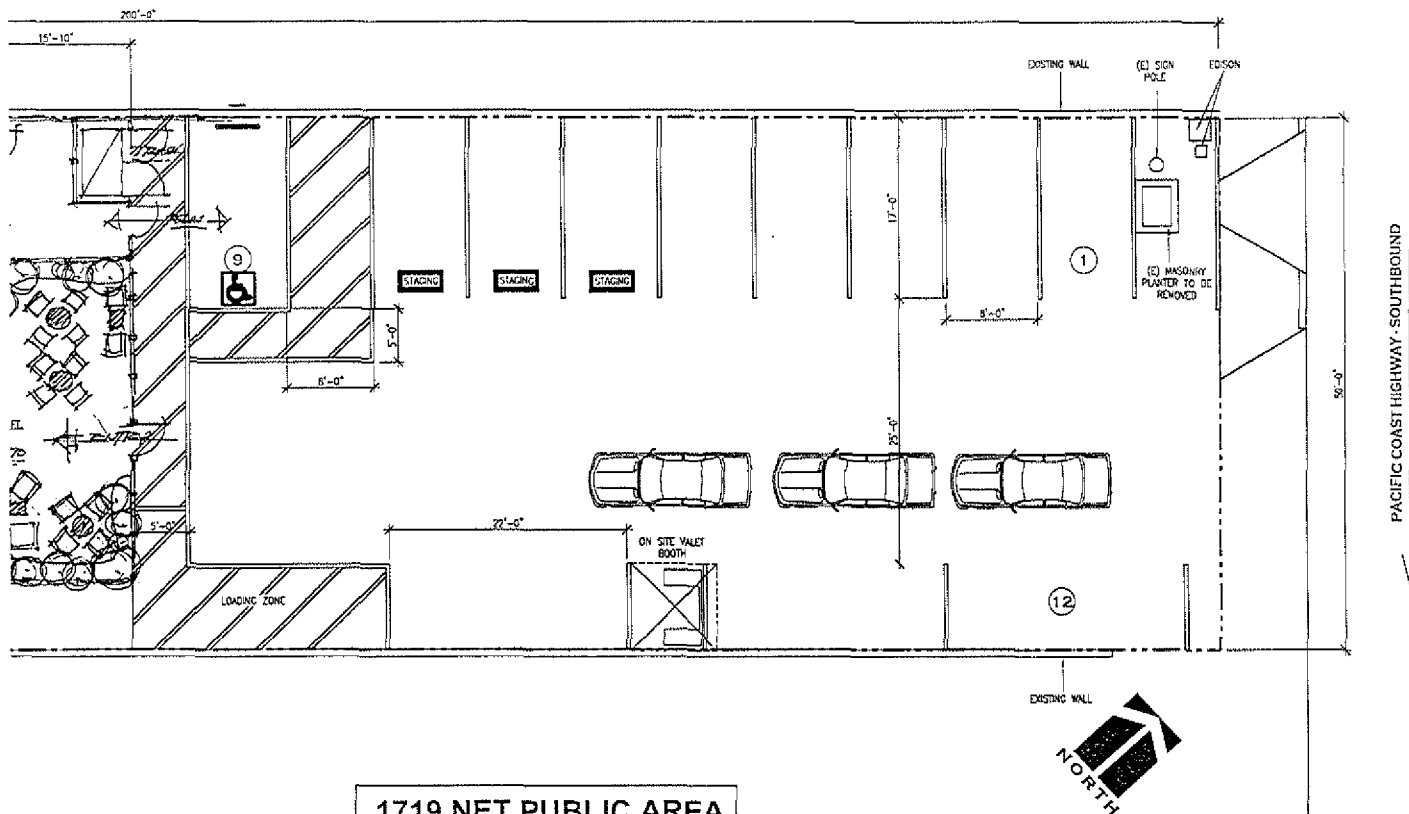
PA2011-005 for UP2011-001  
2601 West Coast Highway  
G.E.P. Enterprise Group

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APR 25 2011

CITY OF NEWPORT BEACH





1719 NET PUBLIC AREA

SCALE:

1/8" = 1'-0"

SEATING

ENTRY PATIO = 22 SEATS  
DINING = 90 SEATS  
BAR = 10 SEATS

EMPLOYEE COUNT

MAXIMUM OF 9

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PLANNING DEPARTMENT

APR 25 2011

CITY OF NEWPORT BEACH



HATCH  
DESIGN GROUP

3399 G AIRPORT LOOP DR.  
COSTA MESA, CA 92626  
PHONE: (714) 979-6345  
FAX: (714) 979-6430  
WWW.HATCHDESIGN.COM

"WORKING TITLE"  
THE DRY DOCK  
2601 WEST COAST HIGHWAY  
NEWPORT BEACH, CA 92663-4708

**City of Newport Beach  
Police Department**

**Memorandum**

February 15, 2011

**TO:** Fern Nueno, Assistant Planner

**FROM:** Detective Bryan Moore

**SUBJECT:** Dry Dock Restaurant, 2601 West Coast Highway, Use Permit No. UP2011-001 (PA2011-005).

At your request, the Police Department has reviewed the project application for *Dry Dock*, located at 2601 West Coast Highway, Newport Beach. Per the project description, the applicant is requesting a use permit application for a food service restaurant with late hours, live entertainment, alcohol sales, and an emphasis on nighttime deliveries. The proposed hours of operation for dining are 11:00 a.m. to 2:00 a.m., daily. The proposed hours of operation for the food delivery are 5:00 p.m. to 1:30 a.m., daily. The application also includes a request for a parking management plan to address off-site parking, valet, and an adjustment to the off-street parking requirements. The applicant proposes to secure 20 parking spaces in an off-site lot located at Tustin Avenue and Avon Street, and to provide valet parking beginning at 6:00 p.m.

The applicant will apply for a Type 47 (General – Eating Place) license with the Department of Alcoholic Beverage Control. The license will be conditioned appropriately to protect the health, safety and welfare of the community.

This new location is within an area where the number of crimes is above the City-wide reporting district average. Additionally, this location is within an RD that is over the Orange County per capita of ABC licenses.

**Applicant History**

The applicant, Jeff Reuter, has been a resident of the City of Newport Beach for the past 58 years. He has been involved in the restaurant business, either as a manager or owner, for approximately 40 years. He is currently the owner of 3-Thirty-3 Waterfront which has been operating on Bayside Drive since 2004.

Mr. Reuter's vision for the Dry Dock restaurant is to bring back the taste of barbeque to the Mariner's Mile district of Newport Beach. In addition, he would like to provide late night delivery of high quality meals to the residents of the City.

The restaurant itself will be indicative of an upscale dining establishment with a fixed bar and 1-2 televisions, which will add to the overall ambiance. Mr. Reuter would also like to provide live entertainment (e.g. three piece band) on Saturdays and Sundays between the hours of 3 p.m. and 7 p.m. According to Mr. Reuter, there will be no live entertainment provided at any other time.

It should also be noted that Mr. Reuter intends on utilizing the docks to the rear of the establishment for take-out service. He has indicated that he has no desire to serve / sale alcoholic beverages from docking area.

### **Recommendations**

The Police Department has no objection to the operation as described by the applicant.

It should be noted that the proposed operation will offer alcoholic beverage service (for on-site consumption) in combination with food service, late hours, and live entertainment. As a result, the applicant/operator will be subject an Operator's Permit issued by the Chief of Police.

### **Signs and Displays**

Any signs or displays would need to conform to City requirements. There shall be no exterior advertising or signs of any kind or type, including advertising directed to the exterior from within, promoting or indicating the availability of alcoholic beverages. Interior displays of alcoholic beverages or signs, which are clearly visible to the exterior, shall constitute a violation of this condition.

### **Hours of Operation**

The proposed hours of operation for dining are 11:00 a.m. to 2:00 a.m., daily.

### **Security**

The applicant shall provide licensed security personnel (a minimum of 1 per 50 patrons) while offering live entertainment. A comprehensive security plan for the permitted uses shall be submitted for review and approval by the Newport Beach Police Department.

The procedures included in the plan and any recommendations made by the Police Department shall be implemented and adhered to for the life of the use permit.

### **Employee Training**

Require all owners, managers, and employees selling alcoholic beverages to undergo and successfully complete a certified training program in responsible methods and skills for serving and selling alcoholic beverages.



**Additional Comments**

For the purposes of this application, staff may also want to consider establishing conditions that would require a special event permit. A special event permit may be required for any event or promotional activity outside the normal operational characteristics of the proposed operation.

For example, events likely to attract large crowds, events for which an admission fee is charged, events that include any form of contract promoters, or any other activities as specified in the Newport Beach Municipal Code to require such permits.

**Other Recommended Conditions**

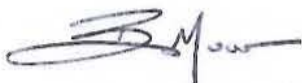
In addition, the Police Department has determined that the following conditions would be appropriate for the Conditional Use Permit for the business:

1. Approval does not permit Dry Dock to operate as a bar, tavern, cocktail lounge or nightclub as defined by the Municipal Code, unless the Planning Commission first approves a use permit.
2. Full menu food service shall be available for ordering at all times that the restaurant establishment is open for business.
3. No alcoholic beverages shall be consumed on any property adjacent to the licensed premises under the control of the licensee.
4. No "happy hour" type of reduced price alcoholic beverage promotion shall be allowed except when served in conjunction with food ordered from the full service menu.
5. VIP passes or other passes to enter the establishment, as well as door charges, cover charges, or any other form of admission charge, including minimum drink order or sale of drinks is prohibited.
6. The use of private (enclosed) "VIP" rooms or any other temporary or permanent enclosures separate from public areas are prohibited.
7. Petitioner shall not share any profits or pay any percentage or commission to a promoter or any other person based upon monies collected as a door charge, cover charge, or any other form of admission charge, including minimum drink orders or the sale of drinks.



8. The quarterly gross sales of alcoholic beverages shall not exceed the gross sales of food during the same period. The licensee shall at all times maintain records, which reflect separately the gross sales of food and the gross sales of alcoholic beverages of the licensed business. These records shall be kept no less frequently than on a quarterly basis and shall be made available to the Police Department on demand.
9. There shall be no on-site radio, television, video, film or other electronic media broadcasts, including recordings to be broadcasted at a later time, which include the service of alcoholic beverages, without first obtaining an approved special event permit issued by the City of Newport Beach.
10. There shall be no live entertainment allowed on the premises without first obtaining a permit from the City.
11. Noise from the live entertainment shall be confined to the interior of the structure.
12. There shall be no dancing allowed on the premises.
13. Strict adherence to maximum occupancy limits is required.
14. No games or contests requiring or involving the consumption of alcoholic beverages shall be permitted.

If you have any questions, please contact Detective Bryan Moore at (949) 644-3725.



Bryan Moore, ABC Liaison  
Detective Division



Craig Fox, Captain  
Detective Division Commander

**Burns, Marlene**

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**From:** Nueno, Fern  
**Sent:** Thursday, June 09, 2011 8:28 AM  
**To:** Burns, Marlene  
**Subject:** FW: planning commission agenda for Josh Slocums  
**Attachments:** CCE06082011\_00000.pdf

Fern Nueno, LEED AP  
Assistant Planner  
Planning Division  
[fnueno@newportbeachca.gov](mailto:fnueno@newportbeachca.gov)  
(949) 644-3227

City of Newport Beach | Community Development Department | 3300 Newport Blvd | Newport Beach, CA 92663  
*A responsive, knowledgeable team of professionals guiding community development in the public interest.*

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**From:** Sue Harvey-Reese [\[mailto:suereese@fea.net\]](mailto:suereese@fea.net)  
**Sent:** Wednesday, June 08, 2011 6:32 PM  
**To:** Nueno, Fern  
**Subject:** FW: planning commission agenda for Josh Slocums

We are concerned about the potential noise and parking for this proposal.

*Sue Harvey Reese  
2216 Cliff Drive  
Newport Beach, CA 92663*

*949-645-9560 - home  
949-878-6158 - cell*

**CITY OF NEWPORT BEACH  
PLANNING COMMISSION STAFF REPORT**

June 9, 2011 Meeting

Agenda Item 3

**SUBJECT:** Dry Dock Restaurant - PA2011-005  
2601 West Coast Highway  
Conditional Conditional Use Permit No. UP2011-001

**APPLICANT:** G.E.P. Enterprise Group

**PLANNER:** Fern Nueno, Assistant Planner  
(949) 644-3227, fnueno@newportbeachca.gov

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**PROJECT SUMMARY**

A conditional use permit application for a food service restaurant with late hours, live entertainment, alcohol sales, outdoor dining, and delivery. The application also includes a request for a parking management plan to address off-site parking, valet, and an adjustment to the off-street parking requirements. The proposed hours of operation for dining and delivery are 11:00 a.m. to 2:00 a.m., daily.

**RECOMMENDATION**

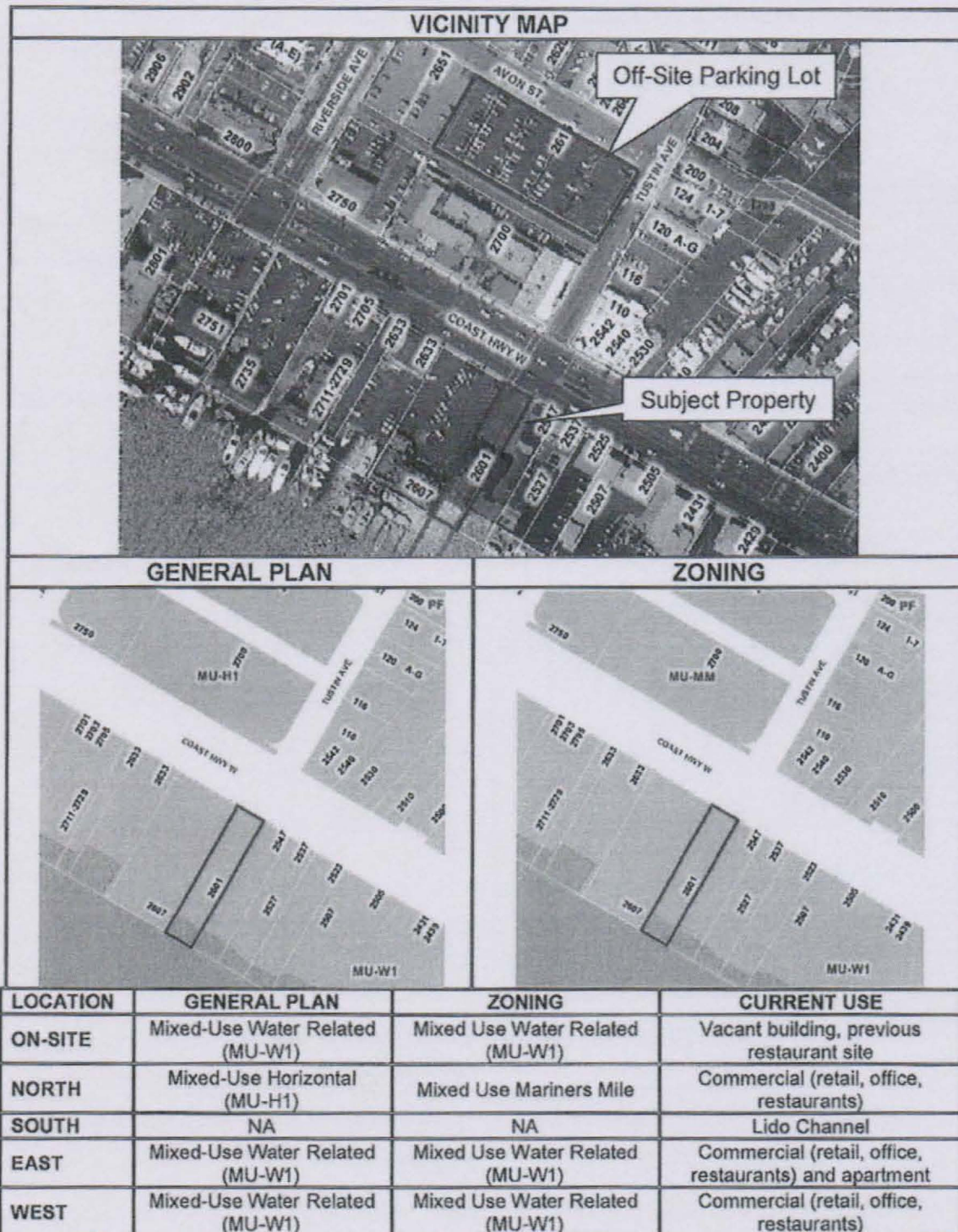
- 1) Conduct a public hearing; and
- 2) Adopt Resolution No. \_\_\_\_ approving Conditional Use Permit No. UP2011-001 No. (Attachment No. PC 1).

**INTRODUCTION**

**Project Setting**

The subject property is located on the south side of Coast Highway, directly across from Tustin Avenue, within Mariner's Mile. The property is approximately 11,949 square feet in area (50 feet wide by 240 feet deep), including a small portion that is submerged. The lot is developed with a 3,987 square foot single-story commercial restaurant building, a surface parking lot with twelve (12) parking spaces, and a boat slip. Mariners' Mile is a mixed-use area developed with primarily commercial and marine uses.







### Project Description

The applicant requests a conditional use permit for a food service restaurant with late hours, live entertainment, alcohol sales, and outdoor dining. The applicant proposes to provide high quality barbeque for sit-down meal service and delivery. The proposed hours of operation are 11:00 a.m. to 2:00 a.m., daily. Delivery is proposed during the same hours that the restaurant is in operation. Live entertainment is proposed on Saturdays and Sundays from 2:00 p.m. to 7:00 p.m. Dancing is not requested. The applicant is requesting a Type 47 (beer, wine, distilled spirits) Alcoholic Beverage Control (ABC) License, which is for on-sale general eating place.

*Limit request*

The application also includes a request for a parking management plan to address off-site parking, valet, and an adjustment to the off-street parking requirements. The applicant proposes to secure 20 parking spaces in an off-site lot located at Tustin Avenue and Avon Street and to provide valet parking beginning at 6:00 p.m., daily. The Zoning Code requires one (1) parking space for every 30-50 square feet of net public area, so the requirement is between 35 and 58 parking spaces. Therefore, there will be a deficiency of between 3 and 26 parking spaces.

The applicant proposes some interior alterations to the restaurant, primarily in the kitchen area. The bar and seating areas will remain generally the same as when the building was operated as Josh Slocum's. The existing building is 3,987 square feet in gross floor area, with 1719 square feet of net public (seating and customer) area and it accommodates approximately 80 seats. The addition of a waiting area/outdoor patio is requested outside of the main entrance facing the parking lot. This outdoor dining area will be 25 percent or less of the interior net public area.

### Background

The existing restaurant was originally established in 1968, prior to the requirement of a use permit for eating and drinking establishments. The site was zoned C-O-Z (Limited Commercial) which permitted restaurants provided that they met the parking requirement of one space for every three seats. At that time, the site had a total of 22 on-site parking spaces to accommodate a 66-fixed seat restaurant. Subsequently, various owners/operators have increased the seating and applied for six (6) off-site parking agreements over the years.

On October 23, 1986, the Planning Commission granted Use Permit No. UP3239 authorizing the expansion in the hours of operation of the restaurant permitting it to open at 11:00 a.m. However, in 1989, staff documented the fact that the restaurant never took advantage of the increased hours of operation, and pursuant to the conditions of approval and the Municipal Code, the Use Permit became void 24 months after its approval. The existing restaurant, thereby, had a nonconforming right to operate as a restaurant subject to the operational characteristics and restrictions of a previous off-site parking agreement because the 1986 Use Permit was void.



In 2001, the restaurant began changing its business operations by providing live music and dancing after dining hours. Table and chairs were cleared from the main dining room creating a dancing area for patrons. Recorded music was played by disc jockeys and live bands performed on weekends. The Police Department documented on several occasions that live bands have performed with sound amplification. There are no records that a Café Dance Permit and/or a Live Entertainment Permit have ever been sought or issued. The addition of live entertainment and dancing substantially changed the restaurant's original operational characteristics and a use permit was required.

On September 16, 2003, the operator filed a use permit application (UP2003-220) to allow the existing establishment to operate as a full-service restaurant and to have a nightclub operation with live entertainment and dancing nightly between the hours of 9:00 p.m. to 2:00 a.m. The application also included a modification of parking requirements because there had been a reduction in on-site parking and the combined total spaces provided on and off-site did not meet code requirements.

On May 6, 2004, the Planning Commission approved a use permit to allow the expansion of the existing restaurant and denied the request to allow the property to operate as a nightclub. The approval allowed the restaurant to increase the occupancy from 133 to 143 persons and to waive three (3) parking spaces.

On May 20, 2004, the applicant appealed the Planning Commission's decision to the City Council, due to the denial of the nightclub portion of the request. After requests for more information and continuance of the item, on August 24, 2004, the City Council denied the appeal and upheld and affirmed the decision of the Planning Commission.

Use Permit No. UP2003-220 was never exercised and subsequently expired; therefore no active use permit exists for this property.

## **DISCUSSION**

### **Analysis**

*Consistency with General Plan, Coastal Land Use Plan, and Zoning Code*

The subject property is designated as Mixed-Use Water Related (MU-W1) by the Land Use Element of the General Plan, which is applied to waterfront locations along Mariners' Mile Corridor in which marine-related, visitor-serving, commercial, and residential uses are allowed. The proposed project is consistent with this designation as eating and drinking establishments are visitor-serving and commercial uses. The proposed project will also have space for approximately ten (10) boats, available for patrons who choose to take a boat to the restaurant. Furthermore, Land Use Policy LU 6.19.2 (Bay Fronting Properties) encourages marine-related and visitor-serving retail,

restaurant, hotel, institutional, and recreational uses, with some allowance for residential uses.

The Coastal Land Use Plan designates the site as Mixed Use Water Related (MU-W), which is intended to provide for commercial development on or near the bay in a manner that will encourage the continuation of coastal-dependent and coastal-related uses and visitor-serving uses, as well as allow for the development of mixed-use structures with residential uses above the ground floor. The proposed eating and drinking establishment is consistent with this designation.

The Mixed-Use land use designation is implemented by the Mixed Use Water Related (MU-W1) Zoning District. Eating and drinking establishments designated as "Food Service, Late Hours" are allowed with Planning Commission or City Council approval of a conditional use permit. Facilities open to the public past 11:00 p.m. any day of the week are defined by the Zoning Code as establishments with late hours.

#### *Outdoor Dining*

The proposed outdoor dining will be located outside of the front entrance facing the parking lot. In addition to acting as an outdoor dining area, the patio will also act as a waiting area for customers waiting to be seated or those picking up to-go orders. The interior net public area proposed is 1,719 square feet, and the Zoning Code allows outdoor dining areas up to 25 percent of the interior net public area without an increase in the parking requirement. Therefore, the applicant has requested an outdoor dining area of 429 square feet (25 percent). The project plans show 480 square feet of outdoor seating area, but should the project be approved, the size would be reduced to 429 square feet or 25 percent of the interior net public area. Because of the existing configuration of the restaurant, the applicant does not think adequate room is available in the corridor for customers to wait for a table. The corridor contains the restrooms and leads to the host stand, bar, and dining area. For this reason, the outdoor dining area is proposed to alleviate potential crowding in the entry corridor. People waiting for a table or to-go orders may be offered beverages while they wait.

#### *Hours of Operation*

Pursuant to Section 20.48.090 of the Zoning Code, the Planning Commission must consider the following potential impacts upon adjacent or nearby uses when reviewing an application to allow late-hour operations:

1. *Noise from music, dancing, and voices associated with allowed outdoor uses and activities;*
2. *High levels of lighting and illumination;*



3. *Increased pedestrian and vehicular traffic activity during late and early morning hours;*
4. *Increased trash and recycling collection activities;*
5. *Occupancy loads of the use; and*
6. *Any other factors that may affect adjacent or nearby uses.*

The proposed hours of operation for restaurant dining and delivery are 11:00 a.m. to 2:00 a.m., daily. Possible noise impacts will be diminished because dancing is not proposed, thereby limiting the likelihood the establishment will evolve into a nightclub. Significant noise impacts from the proposed outdoor patio are not anticipated given the proposed location on the north side of the building facing the parking lot and West Coast Highway. The proposed use will not necessitate high levels of lighting or illumination and any outdoor lighting must conform to Zoning Code Section 20.30.070 (Outdoor Lighting). A temporary increase in traffic during late and early morning hours on weekends is expected along West Coast Highway; however, this portion of Coast Highway is a major road, so disturbances on residential streets are not expected to occur.

Should the Planning Commission approve the application, the applicant would be required to obtain an Operator License from the Police Department. The Operator License should provide for enhanced control of noise, loitering, litter, disorderly conduct, parking/circulation, and other potential disturbances resulting from the establishment, and will provide the Police Department with means to modify, suspend, or revoke the operator's ability to maintain late-hour operations.

Because of the distance to the nearest Residential Zoning District, the hours of operation for the restaurant and delivery service should not negatively impact the neighborhood. However, staff recommends a closing time of midnight for the outdoor dining area to diminish potential impacts regarding late night noise to neighbors down the street and above West Coast Highway, and any future mixed-use development.

#### *Live Entertainment*

The proposed live entertainment is requested for Saturdays and Sundays only from 2:00 p.m. to 7:00 p.m. The live entertainment will consist of a 2-3 piece group playing background music with amplification. Because of the proposed hours, the design of the restaurant, and the distance to the nearest residential uses, the proposed live entertainment should not be detrimental to the community. The restricted days and hours will prevent any potential late night impacts that could occur and will limit the possibility of the establishment having a nightclub atmosphere. Moreover, dancing is not proposed with this application. Approval of this Conditional Use Permit would not permit the establishment to operate as a bar, tavern, cocktail lounge, or nightclub, as



defined by the Municipal Code, despite the live entertainment and late operating hours. The interior dining area and bar are situated towards the water side of the property, and there is no patio along the water that would allow sounds to carry across the Lido Channel. A condition of approval has been included requiring the exterior windows to be maintained in the closed position after 11:00 p.m., daily. Although the Zoning does allow for mixed-use properties, there are not any occupied residential dwelling units in the vicinity. The property owner of the mixed-use structure to the east of the subject property has not expressed any concerns over the proposed use.

#### *Alcohol Sales*

When reviewing an application to allow an eating or drinking establishment to sell, serve, or give away alcohol, Section 20.48.090 (Eating and Drinking Establishments) of the Zoning Code requires the Planning Commission to evaluate the potential impacts upon adjacent uses (within 100 feet as measured between the nearest lot lines) and to consider the proximity to other establishments selling alcoholic beverages for either off-site or on-site consumption. The adjacent uses are food service, retail sales, and general commercial uses, which are compatible with the proposed restaurant.

In order to approve a use permit for alcohol sales, the Planning Commission must also find that the use is consistent with the purpose and intent of Section 20.48.030 (Alcohol Sales). In doing so, the follow must be considered:

- a) The crime rate in the reporting district and adjacent reporting districts as compared to other areas in the City.
- b) The numbers of alcohol-related calls for service, crimes, or arrests in the reporting district and in adjacent reporting districts.
- c) The proximity of the establishment to residential zoning districts, day care centers, hospitals, park and recreation facilities, places of worship, schools, other similar uses, and any uses that attract minors.
- d) The proximity to other establishments selling alcoholic beverages for either off-site or on-site consumption.
- e) Whether or not the proposed amendment will resolve any current objectionable conditions.

Input has been provided by the Police Department, which has reviewed the application and does not object to the operations as proposed by the applicant. All crime rate data discussed below is from 2009. The subject property is located within Reporting District (RD) 25, which includes Mariners' Mile between Tustin Avenue and Old Newport Boulevard, and Newport Heights. Refer to Attachment No. PC 5 for a map of the Reporting Districts and the comments from the Police Department.

- d) The proximity to other establishments selling alcoholic beverages for either off-site or on-site consumption.

| Reporting District | Active ABC Licenses | Per Capita License Ratio |
|--------------------|---------------------|--------------------------|
| 25                 | 21                  | 1 per 139 residents      |
| 24                 | 9                   | 1 per 556 residents      |
| 16                 | 6                   | 1 per 464 residents      |
| County-wide        | 5,589               | 1 per 542 residents      |

The table above represents the number of active ABC licenses for RD 25, RD 24, RD 16, and the County of Orange. RD 25 has a greater number of licenses and per capita ratio than RD 24 and RD 16. The portion of Mariners' Mile where the subject property is located contains several other restaurants, which may explain the higher number of licenses. Other establishments in the area include Rolf's Wine, Joe's Crab Shack, Billy's at the Beach, Garlic Jo's, Jack Shrimp, China Palace, Villa Nova, Chart House, and the Rusty Pelican. A retail wine store is located across the street on the corner of Tustin Avenue and West Coast Highway.

- e) Whether or not the proposed amendment will resolve any current objectionable conditions.

There are no current objectionable conditions at the subject property. While the property has had some enforcement issues in the past, the proposed use is substantially different than previous uses, notably that no dancing is proposed and live entertainment would be limited to Saturdays and Sundays from 2:00 p.m. to 7:00 p.m. The proposed Conditional Use Permit will re-establish a restaurant use in a vacant building that has been inactive for years. Approval of this application will necessitate the operator to obtain an Operator License pursuant to Chapter 5.25 of the Municipal Code, issued by the Chief of Police.

#### *Parking Requirement*

The Zoning Code requires one (1) parking space for every 30-50 square feet of net public area, so the requirement is between 35 and 58 parking spaces. The applicant is supplying 12 on-site parking spaces and 20 off-site parking spaces; therefore, there will be a deficiency of between 3 and 26 parking spaces. Based on the operational characteristics and design of the establishment, staff is recommending a parking requirement of one (1) parking space for every 40 square feet of net public area. The proposed net public area is 1,719 square feet requiring 43 parking spaces leading to a parking waiver of eleven (11) parking spaces.

Section 20.40.060 (Parking Requirements for Food Service Uses) sets guidelines for establishing parking requirements. The following information on the design



characteristics, operational characteristics, and location of the establishment were used to determine the staff recommended (1/40) parking requirement. The applicant is making the dock slips available for public parking, increasing the amount of parking available for the use and promoting the water-related use encouraged in Mariners' Mile. The outdoor dining is limited to less than 25 percent of the interior net public area. The amount of floor area devoted to live entertainment is small, and no dancing is proposed. The establishment will have some television screens, but no pool tables or other attractions are proposed. The applicant proposes to provide high end barbeque that will most likely lead to a low turnover rate. There are other nearby uses that will lead to some walk-in trade. Off-site parking and valet is addressed in the draft Parking Management Plan (Attachment No. PC 3).

The Public Works Department reviewed the application and recommends that the proposed project provide all code-required parking as determined by the Planning Division at the on-site and secured off-site locations. This would mean the applicant would need to provide 11 additional parking spaces at a secured off-site location. Additionally, General Plan Land Use Element Policy LU 6.19.5 (Parking) states, "Require adequate parking and other supporting facilities for charters, yacht sales, visitor-serving, and other waterfront uses." However, staff believes that through the Parking Management Program that includes active parking lot management through valet operations, negative impacts from a reduction of on-site parking spaces can be reduced.

#### *Parking Management Plan*

A parking management plan is necessary to mitigate impacts associated with a reduction in the number of required parking spaces. The draft Parking Management Plan (Attachment No. PC 3) includes a requirement for off-site parking and valet operations. The applicant proposes to lease 20 parking spaces from the owner of the parking lot located at 2615 Avon Street. The draft Parking Management Plan requires that any change in the terms of the lease that would affect the 20 secured parking spaces be reviewed by the Community Development Director. The off-site parking lot is less than 500 feet away from the subject property. The lot contains 122 parking spaces and serves the uses located at 2700 West Coast Highway, which is developed with a 36,000-square-foot commercial building with 22 on-site parking spaces. This commercial building houses office and retail uses and no eating and drinking establishments. All 144 spaces are required for the uses at 2700 West Coast Highway. Staff conducted a parking survey of the off-site lot counting the number of cars parked in the lot at various times throughout the week. Survey times included peak lunch and dinner hours. The results demonstrate that the highest occupancy was 67 cars on a Thursday between noon and 1:00 p.m. The average number of cars counted throughout the two week survey was 40 (33 percent occupied).

While staff does not want to encourage the use of public parking for private use, Mariners' Mile does contain on-street parking and a municipal lot near the subject



property. The applicant included information on the metered and unmetered parking in the parking management plan submitted with the application (Attachment No. PC 2). Some of this information was incorporated into the draft Parking Management Plan. The parking survey conducted by staff also included a one (1) week survey of 91 nearby public parking spaces. Most of the spaces are metered and unmetered street parking, but 16 are located within a municipal parking lot near the Tustin Avenue and Avon Street intersection. The highest number of cars was counted on a Saturday night between 8:00 p.m. and 9:00 p.m. where 73 cars were parked within the 91 available spaces. The average number of cars counted throughout the survey period was 49 (53 percent occupied).

The parking survey demonstrated that parking is available in the off-site parking lot and in nearby public parking spaces. Furthermore, the parking study conducted in 2009 by Walker Parking Consultants concluded that overall the Mariners' Mile area does not have a parking shortage. The draft Parking Management Plan will ensure that off-site parking is available for the use and that valet operations eliminate any congestion that could occur in the area due to the restaurant operations. If the valet operations are insufficient to meet the needs of the proposed use, then the valet plan and Parking Management Plan will need to be modified and reviewed by the City Traffic Engineer and Community Development Director.

The valet service will be in operation during the busiest times for the restaurant. Valet attendants will be stationed in the middle of the on-site parking lot to avoid backup onto West Coast Highway. Valet attendants will be stationed at the subject property and at the off-site lot.

#### *Economic Development*

The Economic Development staff reviewed the application and supported the proposed Dry Dock project and hoped the Planning Commission would make every reasonable effort to approve the request. Economic Development staff agreed with the applicant's statement that special consideration of the site's parking deficiencies should be granted, given that the conditions of the site and operations have not changed significantly from previous restaurant operations in this location. Finally, staff believed that the restaurant's location in the heart of a commercial area along Coast Highway is appropriate for an operation with extended hours of operation and live entertainment.

#### *Required Findings*

Section 20.52.020 (F) (Conditional Use Permits and Minor Use Permits), Section 20.40.100 (B) (Off-Site Parking), and Section 20.48.030 (C) (Alcohol Sales) of the Zoning Code require certain findings to be made in order to approve the project. In order to grant approval of the Conditional Use Permit, the Planning Commission must make each of the following findings:



1. *The use is consistent with the General Plan and any applicable specific plan;*
2. *The use is allowed within the applicable zoning district and complies with all other applicable provisions of this Zoning Code and the Municipal Code;*
3. *The design, location, size, and operating characteristics of the use are compatible with the allowed uses in the vicinity;*
4. *The site is physically suitable in terms of design, location, shape, size, operating characteristics, and the provision of public and emergency vehicle (e.g., fire and medical) access and public services and utilities; and*
5. *Operation of the use at the location proposed would not be detrimental to the harmonious and orderly growth of the City, or endanger, jeopardize, or otherwise constitute a hazard to the public convenience, health, interest, safety, or general welfare of persons residing or working in the neighborhood of the proposed use.*
6. *The proposed use is consistent with the purpose and intent of Section 20.48.030 (Alcohol Sales).*
7. *The parking facility is located within a convenient distance to the use it is intended to serve.*
8. *On-street parking is not being counted towards meeting parking requirements.*
9. *Use of the parking facility will not create undue traffic hazards or impacts in the surrounding area.*
10. *The parking facility will be permanently available, marked, and maintained for the use it is intended to serve.*

Staff believes that findings for approval can be made, and facts in support of the required findings are included in the draft resolution (Attachment No. PC 1). The operation of a "Food Service, Late Hours" use with alcohol sales is consistent with the purpose and intent of the Mixed-Use Water Related (MU-W1) designation of the General Plan and Zoning Code. The use is compatible with the neighborhood because the Mariners' Mile area is an established commercial area with several similar uses nearby. The existing site is located on a major road and has been utilized for restaurant uses since 1968. It should be noted that this area may see future residential development based upon the recently applied mixed use land use designation. Those projects could only be developed on lots that are a minimum of 200 feet wide; therefore, it is unlikely that such a project would abut the project site given that the lot width of abutting sites is less than 200 feet.

The applicant proposes an emphasis on upscale delivery that will specialize in items that travel well, such as baby back ribs. The delivery vehicle will load and unload on site and will not be parked in the public right-of-way. Conditions of approval related to standard operations for eating and drinking establishments have been included for the overall operations of the proposed restaurant. Conditions are included related to on-sale alcoholic beverage activities, including training of personnel who sell or serve alcoholic beverages. Adequate parking is maintained and provided by valet service in conformance with the draft Parking Management Plan. Potential noise impacts will be diminished because live entertainment is not proposed during late hours or on weekdays and dancing is not proposed. Staff recommended a condition of approval requiring the Conditional Use Permit to be reviewed by the Planning Commission within one (1) year of the restaurant being in operation in order to monitor the parking and restaurant operations and to ensure that the use has not been detrimental to the community.

The Police Department indicates it has no objections to the applicant's request. The ABC License will be conditioned appropriately to protect the health, safety, and welfare of the community. To ensure the proposed use does not create a detrimental impact during late hours, the applicant (and any future operators of the existing eating and drinking establishment) will be required to obtain an Operator License issued by the Chief of Police pursuant to Chapter 5.25 of the Municipal Code. Additionally, the applicant will be required to take reasonable steps to discourage and correct objectionable conditions that constitute a nuisance, should they occur, to areas surrounding the restaurant and adjacent properties during business hours. If the operator is unable to abide by the conditions of approval, or prevent objectionable conditions from occurring, the Police Department will have the authority to modify, suspend, or revoke the operator's ability to maintain late-hour operations, or require other corrective measures. The Police Department provided alcohol related crime statistics that help to demonstrate that the project should not prove to be a detriment.

The off-site parking lot is located within 500 feet of the subject property. Employees who drive to work will be required to park in the off-site parking lot. Use of the lot will not create undo traffic hazards because most patrons will be able to utilize the valet service and the valet plan will be reviewed and approved by the City Traffic Engineer. The leased parking spaces will be clearly marked so that the valet service employees and restaurant patrons will know which spaces are available for the restaurant use at the subject property.

#### Summary

The subject property and structure have historically been uses as a restaurant. The applicant proposes minor alterations to the property with the floor plan remaining generally unchanged. Conditional Use Permit approval is required for the restaurant operation and must address the restaurant use, late hours, alcohol sales, live entertainment, outdoor dining, delivery operation, and parking. The proposed project is





1040 North Tustin Avenue, Anaheim, CA 92807 (800) 842-0221  
www.maxxess-systems.com

Dear Chairman McDaniel and members of the Planning Commission:

We are, as signers of this letter, directly and negatively affected by the above application and, perhaps more importantly, by the intended conduct the application, as presently constituted, contemplates. We all live directly across the bay from this property and all of us are in extremely close acoustic range to noise, lighting, and other nuisance-related impacts that the granting of the application will surely cause.

We do not think that sufficient research has been completed to determine these impacts; page 6 of the staff report reflects, for example:

*Because of the distance to the nearest Residential Zoning District, the hours of operation for the restaurant and delivery service should not negatively impact the neighborhood.* However, staff recommends a closing time of midnight for the outdoor dining area to diminish potential impacts regarding late night noise to neighbors down the street and above West Coast Highway, and any future mixed-use development.

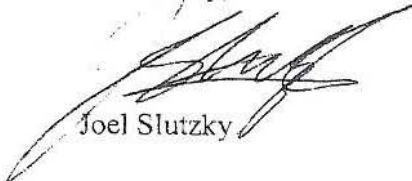
We do not think that the City Staff nor any other representatives have taken any noise measurements to objectively determine the likely impact to us, and the staff report's omission of that evidence and lack of reference to that bears this point out, we think.

There is significant precedent for this problem; a prior applicant in very close proximity, Windows on the Bay, attempted the same application. The City preformed noise studies and ultimately determined that the impact to the across-the-bay neighbors was so great that the application should be denied.

What is particularly egregious, though, is that we got almost no notice (48 hours by postcard on Baker and still no postcard for Slutzky ) of the meeting. We request ample time to prepare a proper opposition and to advise the affected neighbors.

For all of these reasons, we respectfully request that you postpone the application's hearing in order that we may be allowed to organize our evidence and testimony and properly appear and present it to you. We thank you for your consideration and look forward to discussing the matter with you in a businesslike, prepared manner.

Yours truly,



Joel Slutzky



Bob Baker

## Nueno, Fern

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**From:** Barry Eaton [eaton727@earthlink.net]  
**Sent:** Saturday, June 04, 2011 10:02 PM  
**To:** Nueno, Fern  
**Cc:** Ramirez, Gregg; Campbell, James; Brine, Tony  
**Subject:** Proposed Dry Dock Restaurant/Bar

Fern,

I have now read all 69 pages of this staff report and attachments, and I do have a few questions:

1) On page 3 of the staff report, you note that 80 seats are proposed; on page 4, you note that the previous occupancy of Josh Slocums was a total of 144 persons; on page 6, you note that "Occupancy loads of the use" is one of the standards we must consider when judging the impacts of the proposed late night hours; and on page 11 of the proposed Resolution, Condition no. 42 states that "Strict adherence to the occupancy limits is required." But I can't find the new proposed occupancy limits anywhere in the staff report or attachments. As a late night operation, I suspect that, if popular, the occupancy will be considerably in excess of the seating, as it was for Josh Slocums. What are the occupancy limits of the redesigned inside restaurant and the newly proposed patio?

2) Whatever those occupancy limits are, were they taken into account when you recommended (on page 9 of the staff report) the median parking ratio one one space/40 sq. ft. of net public area (within the 30 - 50 square feet per parking space range in the code), and an "adjustment" to the required parking, rather than a ratio more closely resembling a use likely to attract standing room crowds?

3) On page 7 of the staff report, you state that the Police Department "...does not object to the operations as proposed by the applicant." But there is no memo to that effect attached to the staff report. Is there such a memo? If so, could you forward it to us?

4) On page 10 of the staff report, you note that the Public Works Department "...recommends that the project provide all code-required parking..."; but it appears that Planning is recommending the "adjustment", so that the requirement is not fully met. Does that mean that the departments have different views of this issue, or have I misread this?

5) On page 11 of the staff report, you note that the proposed valet service would be available during the busiest times for the restaurant. But the valet service would be available only after 6:00 PM, according to the Parking Management Plan (hand numbered page 43); and the proposed Live Entertainment aspect of the application would include the hours of 2:00 - 6:00 PM on Saturdays and Sundays. Have you assumed that the restaurant would not be at its busiest when live entertainment is proposed, or that off site street and/or parking lot space would be more available, or is there some other rationale that eludes me?



6) On the first page of the proposed Resolution, item no. 3 states as a "Fact" that the parking requirement ratio is one space/40 square feet. Is this not a conclusion (that should be affirmed by the Commission), rather than a "fact"? Isn't it more appropriately covered by Finding B-3 on page 3 of the proposed Resolution?

7) On page 8 of the proposed Resolution, proposed Condition no. 10 requires that "Noise from the live entertainment shall be confined to the interior of the structure." Does that mean that they could not open their windows on Saturday or Sunday afternoons (even in the summer), when providing live entertainment?

8) The applicant states (on hand numbered page 35) that he intends to have 4 delivery vans in use at the site. Is there enough loading zone area to accommodate 4 vans?

Thank you very much for your consideration of these questions. I look forward to your response.

Barry



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www.maxxess-systems.com

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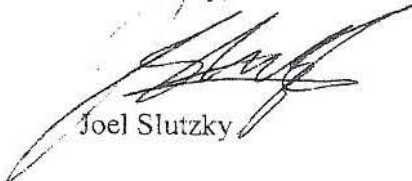
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Yours truly,



Joel Slutzky



Bob Baker

TO: Fern Nueno, Assistant Planner  
RE: Dry Dock Restaurant - PA2011-005

1. Re Condition 14. Applicant states a lease will be entered into between it and Ned McCune. Is Mr. McCune the fee owner? If so, has he agreed that the document can be recorded? If it is to be a sublease, has the fee owner consented to recordation?
2. Re page 12, eight lines from bottom. The owner of 2700 West Coast Highway is required to maintain 144 parking spaces under its current CUP. Must that CUP be amended to allow 20 of those spaces to be allocated to the exclusive use of an unrelated property, thus reducing its available parking by 20 spaces?
3. Re Condition 21. Has an irrevocable offer of dedication or an easement document been submitted that is acceptable to both the fee owner and the City? Can you make the location and scope of this easement available at the PC meeting?
4. Re Parking Plan. How does the Parking Plan address the situation in which all 12 on-site parking spaces are occupied, the valet line is full, and four Delivery Trucks are in the process of being loaded for delivery?
5. Re Parking Plan. Because selling food for off-site consumption is a big part of Applicant's business plan will there be a special short-term parking area for patrons who pick up their food to go such as China Palace has?
6. Parking. If all employees park at the off-site location this leaves only nine spaces for self-parking and valet. Is this adequate?
7. Re page 14, item 8. Applicant's submission indicates that it is relying heavily upon on-street parking (see page 43). How then does the City make this finding?
8. Re Conditions 10 and 53. If Applicant is in compliance with Condition 53 during "live entertainment" would Applicant be in violation of Condition 10 which apparently allows no noise to escape the interior?
9. Are the exterior windows facing the bay the best type of window for sound attenuation?



10. Will a fire sprinkler system be required for the entire restaurant?
11. Re Condition 40. Does delivery food count towards the 50%?
12. Re page 15, last four lines of first paragraph. Should language read, "within one (1) year and every two (2) years thereafter..."?
13. Re Page 15, next to last sentence of second paragraph. Has city attorney opined that the Operating Permit will not give the police chief jurisdiction to impose remedies that would affect Applicant's operations prior to 11:00 p.m.?



**CITY OF NEWPORT BEACH  
PLANNING COMMISSION STAFF REPORT**

June 9, 2011  
Agenda Item 4

**SUBJECT:** Newport Beach Country Club (PA2005-140)  
1600 & 1602 E. Coast Highway

- Planned Community Text Adoption No. PC2005-002
- Tentative Vesting Tract Map No. 2005-003
- Transfer of Development Intensity No. TD2010-003
- Development Agreement No. 2008-001
- Mitigated Negative Declaration No. 2010-008
- Limited Term Permit No. XP2011-004

**APPLICANT:** Golf Realty Fund

**PLANNER:** Rosalinh M. Ung, Associate Planner  
(949)644-3208, rung@newportbeachca.gov

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**PROJECT SUMMARY**

The applicant and property owner, Golf Realty Fund, proposes to develop a planned community where the Newport Beach Country Club and Tennis Club now operate. The development plan consists of a new golf clubhouse, a new tennis clubhouse, five single family residences and 27 bungalows that would be used for short-term lodging.

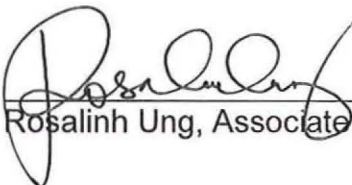
**RECOMMENDATION**

Staff recommends that this item be continued to August 4, 2011, due to the change in the Planning Commission membership.

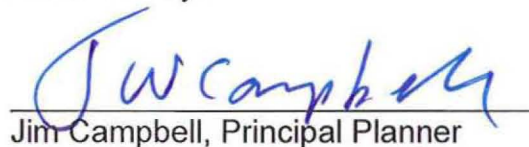
**DISCUSSION**

Staff had anticipated two hearings for the project with the second hearing occurring after the change in Commission membership that will occur July 1, 2011. Staff believes that the community would be better served by waiting until the new Commission is seated.

Prepared by:

  
Rosalinh Ung, Associate Planner

Submitted by:

  
Jim Campbell, Principal Planner

**CITY OF NEWPORT BEACH  
PLANNING COMMISSION STAFF REPORT**

June 9, 2011  
Agenda Item 5

**SUBJECT:** Newport Beach Country Club (PA2008-152)  
1600 E. Coast Highway

- General Plan Amendment No. GP2008-005
- Planned Community Text Adoption No. PC2008-001
- Development Agreement No. DA2010-005
- Mitigated Negative Declaration No. ND2010-010
- Limit Term Permit No. XP2011-005

**APPLICANT:** International Bay Clubs, Inc.

**PLANNER:** Rosalinh M. Ung, Associate Planner  
(949)644-3208, rung@newportbeachca.gov

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**PROJECT SUMMARY**

The applicant and lease holder, International Bay Clubs, Inc., proposes to develop a planned community where the Newport Beach Country Club now operates. The development plan consists of a new golf clubhouse and ancillary uses.

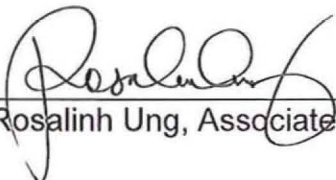
**RECOMMENDATION**

Staff recommends that this item be continued to August 4, 2011, due to the change in the Planning Commission membership.

**DISCUSSION**

Staff had anticipated two hearings for the project with the second hearing occurring after the change in Commission membership that will occur July 1, 2011. Staff believes that the community would be better served by waiting until the new Commission is seated.

Prepared by:

  
\_\_\_\_\_  
Rosalinh Ung, Associate Planner

Submitted by:

  
\_\_\_\_\_  
Jim Campbell, Principal Planner